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# Texas Collection.









*Supers & Herrick*  
**L A W S**

PASSED BY

THE SECOND LEGISLATURE

OF THE

**STATE OF TEXAS.**

VOLUME II.

*Statute*  
*Vol. II*  
*1844 to 1848*  
**PUBLISHED BY AUTHORITY.**

*1844 to 1848*

HOUSTON:

PRINTED AT THE TELEGRAPH OFFICE.

1848.

\*\*\* For more convenient reference, the laws contained herein are severally designated by chapters and numbers in regular series. The laws of the first Legislature are considered as being embraced in volume I, and those of the second in volume II.

\*\*\* The laws of the present or second volume are divided into two parts—Part, I containing those denominated “laws of a general nature;” and part II, those “for private relief” and “incorporating towns, cities, institutions of learning, and private associations of every nature,” in conformity to the provisions of Chapter 71, Section 2.

\*\*\* Those laws signed by the Governor, are designated by the word *Approved*—and those not signed by him, are said to be *Passed*.

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## VOLUME II.—PART I.

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# GENERAL LAWS.

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### CHAPTER 1.

Joint Resolution to employ an express-man to inform Gen. Sam Houston of his election to the Senate of the United States Congress.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the Governor of this State be authorised and requested to employ some person, without delay, to notify Hon. Sam Houston of his election to the Senate of the United States, and that an appropriation be made out of the contingent fund for that purpose.

Approved, December 16, 1847.

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### CHAPTER 2.

Joint Resolution requesting the contractor of the Mail Route from Austin to Bonham to transport the same weekly, instead of semi-monthly, and making provisions for the same.

SECTION. 1. *Resolved by the Legislature of the State of Texas*, That William H. Hunt, contractor for the transportation of the mails from the City of Austin to Bonham, Fannin County, be requested to transport the same weekly, instead of semi-monthly.

Sec. 2. *Be it further Resolved*, That the Legislature memo-

rialize the Post Master General, to make the increase in accordance with the foregoing resolution.

Approved, December 30, 1847.

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### CHAPTER 3.

Joint Resolution granting further time for the payment of Government Dues and the return of Field Notes.

SECTION 1. *Be it Resolved by the Legislature of the State of Texas*, That further time is given until the first day of February, one thousand eight hundred and fifty, for the payment of Government dues and the return of field notes to the General Land Office, on all lands surveyed in pursuance of law. *Provided*, however, that in no case shall a patent to any land issue until all the Government dues thereon shall have been paid.

SEC. 2. *Be it further resolved*, That this joint resolution take effect from and after its passage.

Approved, December 31, 1847.

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### CHAPTER 4.

An Act to reserve one of the Public Buildings in the City of Austin for the Supreme Court.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Comptroller of Public Accounts be, and he is hereby authorized to reserve the building occupied by Mr. Conner, in the City of Austin, for the use of the Supreme Court of the State of Texas.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage.

Approved, January 1, 1848.

## CHAPTER 5.

An Act to provide an appropriation for the payment of the mileage and per diem pay of the Members of the Legislature of the State of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the sum of fifteen thousand dollars be, and the same is hereby appropriated for the payment of the mileage and per diem pay of the members of the Legislature of the State of Texas; also, for the payment of the per diem pay of the officers attendant thereon.

SEC. 2. *Be it further enacted*, That the Treasurer be, and he is hereby authorized and required to pay all drafts which shall be drawn by the Speaker of the House of Representatives, attested by the Chief Clerk of said House; and all drafts which may be drawn by the President of the Senate, attested by the Secretary of the same, for the payment of the mileage and per diem pay of the members of each House of said Legislature, and the per diem pay of the officers attendant thereon, out of any moneys in the Treasury appropriated by this act; and that this act take effect from and after its passage.

Approved, January 1, 1848.

## CHAPTER 6.

An Act to provide for the disposition of the funds received from the United States.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be the duty of the accounting officer, on settling the accounts of James Bourland, late Collector of Customs for the District of Red River, to allow him such portion of the amount received from the General Government of the United States, for the forcible entry of the Texian Customhouse at Bryarly's Landing, in 1843, as was allowed to officers of the customs in cases of seizure under the laws then existing.

SEC. 2. *Be it further enacted* That it shall be the duty of the Governor to pay said Collector the amount found to be due

him by the proper accounting officer, out of the amount received from the proceeds of said claim; and the balance, if any, shall be paid into the State Treasury.

SEC. 3. *Be it further enacted*, That the nett proceeds of the sum of one thousand nine hundred and seventy-five dollars, received from the General Government, as an indemnity for the disarming of a portion of the command of Col. Snively by order of Captain Cook, of the United States Army, in 1843, after deducting therefrom the expense of collection and transportation to the City of Austin, shall be divided equally among the men composing the party disarmed: And in the event of the death of any of the men composing said party, the amount or amounts due such person or persons deceased, shall be paid to his or their legal representatives, on the affidavit of a member of the expedition, that the deceased was of the party disarmed: and in other cases the party applying for the benefit of this act, shall make affidavit that he was a member of said party, corroborated by the evidence of another member.

SEC. 4. *Be it further enacted*, That the expense of collecting and transporting to the City of Austin the moneys described in this act, be deducted *pro rata*, from the sums collected, prior to the division and distribution above provided for: and that this act take effect from and after its passage.

Approved, January 3, 1848.

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## CHAPTER 7.

Preamble and Joint Resolutions of the Legislature of the State of Texas, requesting the Senators and Representatives, of Texas in the Congress of the United States, to urge the passage of a law for the payment of the volunteers called out from this State under the requisition of Col. S. R. Curtis.

Whereas, during the progress of the present war with Mexico, several requisitions have been made upon this State for troops, which have been promptly responded to by our citizens: And whereas, those who went out under the call based upon



the requisition of Col. S. R. Curtis, (then commanding at Camargo,) for two thousand six months mounted riflemen, to meet an existing emergency, have not received pay for their services:

And whereas, these men by their promptness in hastening to the place of rendezvous—in organizing themselves into a regiment—and in marching for the seat of war, under the almost universal impression that the state of affairs in Mexico was such that their services were most anxiously desired, have shown themselves possessed of that true spirit of zealous patriotism, in which rests in a great degree, the power of free governments to render themselves invincible without standing armies:

And whereas, the officers and members of that regiment incurred a very considerable expense in purchasing horses and arms for that campaign:

And whereas, their loss, particularly in horses, was necessarily considerable; from the fact that they received no forage, except for a few days at San Antonio, and that the country was generally burnt over by fires and drought, so that they were almost without grass—their horses becoming thereby comparatively valueless—and that many of them, for want of means, were compelled to sacrifice them at sale, in order to be able to return home:

And whereas, it is necessary that the just claims of these troops to compensation should be presented to the Congress of the United States, therefore:

SECTION 1. *Be it unanimously resolved by the Legislature of the State of Texas, That our Senators and Representatives be requested to urge upon the Congress of the United States, to make such an appropriation as will secure to that regiment a just compensation for their services and losses.*

SEC. 2. *Be it further resolved, That His Excellency the Governor be requested to forward a copy of this preamble and resolutions to each of our Senators and Representatives in Congress, to be by them laid before their respective Houses.*

Approved, January 6, 1848.

## CHAPTER 8.

An Act to provide for Repairs necessary on Public Buildings  
in the City of Austin.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That such an amount of money, arising from the rent of the public buildings situated in the City of Austin, as in the opinion of the Comptroller may be necessary, be appropriated to repair said buildings: *Provided*, the amount of money so appropriated, does not exceed one half of the amount for which the said buildings may be rented.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage.

Approved, January 7, 1848.

## CHAPTER 9.

An Act to provide for locating the Seat of Justice of the  
County of Austin.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That from and after the passage of this act, the County seat of Austin shall be at the place selected by the people at an election holden on the twenty-third day of December, one thousand eight hundred and forty-six, on Thomas Bell's tract of land in said county.

SEC. 2. *Be it further enacted*, That all process heretofore issued, or that may issue up to the first day of February, 1848, shall be returned to the court house at the county seat of justice of the county of Austin, as established by the provisions of the first section of this act; and after the first day of February, 1848, all process shall be made returnable to the court house of Austin county.

SEC. 3. *Be it further enacted*, That in order to name the county seat of justice of the county aforesaid, the Chief Justice shall cause an election to be holden throughout the county, at the usual places of holding elections, on the day of the next

general election of county officers, which shall be conducted according to law; at which time, the people shall declare by vote by what name the county seat shall be known; and the name having the highest number of votes, shall be the name of the county seat: and that this act shall take effect and be in force from and after its passage.

Approved, January 7, 1848.

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## CHAPTER 10.

An Act to admit Franklin B. Sexton, Asa H. Willie, and Josiah F. Crosby to practice law in the Courts of this State.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That Franklin B. Sexton, Asa H. Willie, and Josiah F. Crosby be, and they are hereby admitted to practice law in all of the courts of this State: *Provided*, that the said Franklin B. Sexton, Asa H. Willie, and Josiah F. Crosby, after undergoing an examination as required by law, be deemed qualified for admission: and *provided also*, that the said Franklin B. Sexton, Asa H. Willie, and Josiah F. Crosby shall not, by reason of their minority, be exempt from liability upon their professional engagements.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage.

Approved, January 10, 1848.

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## CHAPTER 11.

An Act the better to define the boundaries of Grayson County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That from and after the passage of this act, the county of Grayson be, and the same is hereby bounded as follows, to wit: Beginning on Red River, at the mouth of Choctaw Bayou;

thence south, twenty-two miles; thence west, twenty-five miles, to the eastern boundary of Denton county; thence north, one and a half miles, to the north-east corner of Denton county; thence west, six and a half miles; thence north, to Red River; thence down the same, with its meanders; to the beginning.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage.

Approved, January 12, 1848.

## CHAPTER 12.

An Act establishing more permanently the seat of justice of Collin County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That James M. McReynolds, James B. Wilmoth, Denton Darby, John Fitzhugh, and William McKinney be, and they are hereby appointed Commissioners to locate the seat of justice in Collin County; who, after being duly sworn, shall proceed to find the centre of said county, and select two places, within three miles of the centre of said county, having due regard to donations that may be offered by individuals for a town site; for the use of said county: The Commissioners shall then proceed to hold an election, giving at least ten days notice thereof; and the place having the greatest number of votes shall be the seat of justice for said county; and the Commissioners shall proceed to lay off and sell the lots therein at public auction, on a credit of twelve months, under the direction of the county court.

SEC. 2. *Be it further enacted*, That the proceeds arising from the sale of lots in said town, or from other donations, shall be applied, under the direction of the county court, for the erection of public buildings in said town.

SEC. 3. *Be it further enacted*, That this act shall be in force and take effect from its passage; and that all laws conflicting

with the provisions thereof be, and the same are hereby repealed.

Approved, January 12, 1848.

## CHAPTER 13.

An Act to amend the eleventh section of an act entitled "an act defining the office and duties of Coroner," approved May 13th, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the eleventh section of the above recited act be, and the same is hereby amended, so as to read after the enacting clause, as follows, to wit: That it shall be the duty of the Coroner, on the receipt of any such information, forthwith to issue a precept, directed to any Constable of the county, requiring him to summon without delay, not less than six nor more than twelve persons, qualified to serve as jurors, to appear at the place where the body is found; and if six do not appear, he shall summon others, until that number do appear.

Approved, January 12, 1848.

## CHAPTER 14.

An Act to provide for the permanent location of the County seat of Grayson County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That James B. Shannon, John Hendricks, Samuel Blagg, James H. Vadere, and M. B. Shackelford, be, and they are hereby appointed Commissioners; whose duty it shall be to find the centre of the County of Grayson, and select two places, within three miles of the said centre, having due respect to donations that may be offered of land or other proper-

ty, for a town site, for the use of the county. The Commissioners shall then proceed to hold elections, at the precincts in said county; and the place receiving the greatest number of votes shall be the county seat of said county: After which, the Commissioners shall proceed to lay off a town and sell the lots therein, on a credit of twelve months; and after reserving one dollar per day, each, for each and every day they may be required to serve as Commissioners, appropriate the remaining proceeds of such sales of lots to the erection of the necessary public buildings, for the use of the county.

SEC. 2. *Be it further enacted*, That this act be in force and take effect from and after its passage.

Approved, January 13, 1848.

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## CHAPTER 15.

An Act appropriating five thousand dollars for the contingent expenses of both Houses of the Legislature.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the sum of five thousand dollars be, and the same is hereby appropriated, to pay the contingent expenses of both Houses of the Legislature.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage,

Approved, January 14, 1848.

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## CHAPTER 16.

Joint Resolution appropriating four thousand dollars for the compensation of Assessors of direct taxes for taking the enumeration of the inhabitants of the State, for the year 1847.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the sum of four thousand dollars be, and the same

is hereby appropriated for the payment of Assessors and Collectors of taxes, for having discharged the duty of taking the enumeration of the inhabitants of this State for the year 1847; and the certificate of the Secretary of State, that the return has been duly made from any county, and setting forth the number and description of the inhabitants thereof, whether residing in town or county, white or colored, shall be a sufficient voucher for the proper officer to audit the same in accordance with the provisions of the act entitled "an act to provide for the enumeration of the inhabitants of the State of Texas," approved April 11th, 1846.

SEC. 2. *Be it further resolved*, That this joint resolution shall take effect from and after its passage.

Approved, January, 17, 1848.

## CHAPTER 17.

An Act to regulate the Salaries of District Attorneys.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the several District Attorneys of this State shall receive an annual salary of five hundred dollars, to be paid quarterly.

SEC. 2. *Be it further enacted*, That the second section of an "act to regulate the salaries of District Judges and District Attorneys," approved December 31st, 1844, be, and the same is hereby repealed.

SEC. 3. *Be it further enacted*, That this act shall take effect from and after the thirteenth day of April, A. D. 1848.

Approved, January 24, 1848.

## CHAPTER 18.

An Act defining the northern boundary line of Collin county.

SECTION 1. *Be it enacted by the Legislature of the State of*

*Texas*, That the northern boundary line of Collin county shall be as follows, to wit: Beginning on the west line of Fannin county, twenty two miles south of the mouth of Choctaw Bayou, at the southeast corner of Grayson county; thence west, to the east boundary line of Denton county.

SEC. 2. *Be it further enacted*, That all laws, conflicting with the provisions of this act, are hereby repealed; and that this act take effect from and after its passage.

Approved, January 24, 1848.

## CHAPTER 19.

An Act supplementary to an act to organize the county of Upshur.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the third section of an act to organize the county of Upshur, be so amended as to read as follows, to wit: That Benjamin Fuller, Miles Robertson, J. R. Taylor, T. C. Hagan, B. Gage, and H. Page be, and they are hereby appointed commissioners, to select two eligible places for the county seat of said county, neither of which shall be more than five miles from the centre thereof; which places shall be submitted to public election at such time and places as may be directed by law; and the place receiving a majority of the legal votes cast at said election, shall be the county seat of said county; and shall be known and called by the name of Gilmer; and the said Commissioners are hereby empowered to purchase land, not to exceed one hundred and sixty acres in quantity, and to receive by donation any amount for said county, for the purpose of erecting public buildings and defraying other necessary expenses.

SEC. 2. *Be it further enacted*, That the Commissioners or a majority of them, shall, on or before the first Monday in May next, select and nominate the places to be voted for as county seat, and shall cause said places to be published and made known to the people of said county, in time to be voted for on the first Monday of June next: and the election herein provi-



ded for, shall be conducted by the said Commissioners in conformity with the law governing elections at the time.

SEC. 3. *Be it further enacted*, That within fifteen days after said election, the Commissioners or a majority of them, shall make known the result of the same; publishing the number of votes given for each place; and they shall forthwith proceed to lay off the place selected for the county seat into convenient lots, reserving one in the centre thereof, of such size as they may deem proper, upon which to erect a court house; and one in some other part thereof, upon which to erect a county jail; and shall at such time or times, as may be agreed upon among themselves, offer said lots for sale, upon a credit of twelve months, taking notes with good security, and mortgages upon the property sold, payable to the Chief Justice of said county and his successors in office, for the use of the county, to be applied to the erection of county buildings first, and then to such other purposes as the County Court of said County may direct: *Provided*, the said Commissioners shall give at least thirty days notice of each and every sale.

SEC. 4. *Be it further enacted*, That the Commissioners for the services required of them by this act, shall receive the sum of two dollars per day for each and every day they may be in service, to be paid out of the proceeds of the sale of said lots.

SEC. 5. *Be it further enacted*, That all laws and parts of laws conflicting with the provisions of this act be, and the same are hereby repealed; and that this act take effect from and after its passage.

Approved, January 26, 1848.

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## CHAPTER 20.

An Act authorizing the County Court of Red River County to have the records in Books A, B, and C, of Deeds, Bonds, Mortgages and other instruments of writing now in the office of the Clerk of said County transcribed.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the County Court of Red River County, be, and

they are hereby, authorized to employ the County Clerk of the aforesaid County, or some suitable person to transcribe in a well bound book or books, all the matter or writing contained in Books A, B, and C., now in the office of the County Clerk of said County purporting to be records of Deeds, Mortgages and other instruments of writing.

SEC. 2. *Be further enacted*, That when the duplicate of said record Books, A, B, and C, shall have been made and completed by said county Clerk or other person so employed, it shall be the duty of the said County Court to examine and compare the said duplicate with the original in open Court, and after the said duplicate shall have been compared with the original, and found correct it shall be the duty of said Court to make out a certificate stating that they have examined and compared the said duplicate, with the original Books A, B, and C, and found it to be a true and correct duplicate of the original Books, which certificate shall be signed by all the members of said Court (who examined the same) and be sworn to before a Judge of the District Court, or some Notary Public of said County, which certificate and oath shall be entered of record in said duplicate and placed on file in said office of County Clerk.

SEC. 3. *Be further enacted*, That after said examination shall have been made, as specified in the foregoing section and certificate of said Court, entered in said duplicate, the same shall be approved of in open Court, which approval shall be entered of record in said duplicate, as well as on the minutes of said Court, and attested by the Clerk of said Court, under the seal of said County of Red River; and it shall be the duty of the Court to take and enclose the original Books, A, B, and C, in good strong paper and seal the same, which seals shall not be broken or envelope taken off, but by order of the District Court.

SEC. 4. *Be it further enacted*, That all copies made by the Recorder of said County of Red River from said duplicate shall be as valid, and shall have the same force and effect as copies from the original might or could have; and in all Courts of Record, where it may be necessary to bring the original Books A, B, or C, into Court, the producing into Court the aforesaid duplicate shall supercede the necessity of producing the original record into Court.

SEC. 5. *Be it further enacted*, That the County Court of Red River County are authorized to make an allowance to the

person thus employed to transcribe the aforesaid Books to be paid out of the County funds of said County which allowance shall not exceed ten cents for every hundred words he may transcribe, and two dollars per day during the time of examining and comparing the duplicate with the originals.

Approved, January 26, 1848.

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## CHAPTER 21.

An Act to change the name of Robert Franklin Cypert to Robert Franklin Miller.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That from and after the passage of this act, the name of Robert Franklin Cypert, of San Augustine county, shall be altered and changed to Robert Franklin Miller.

Approved, January 26, 1848.

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## CHAPTER 22.

An Act to declare the name of Beazley, son of Marcelleat Dugat, and also to legitimate said Beazley.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That Beazley, son of Marcelleat Dugat, shall be known and called by the name of Beazley Dugat.

SEC. 2. *Be it further enacted*, That said Beazley Dugat shall be deemed the legitimate son of Eularien Dugat and Marcelleat Dugat, and shall be capable of inheriting and taking at law the estate or estates of said Eularien Dugat and Marcelleat Dugat.

Approved, January 27, 1848.

## CHAPTER 23.

## An Act to create the county of Webb.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Territory embraced within the following boundaries, to wit: commencing at a point on the Rio Grande opposite the mouth of the Salado River, and running up the Rio Grande to the point where the municipality of Laredo terminates; thence North 32 deg. East until it strikes the Rio Nueces; thence down said stream to the upper corner of J. T. Doswell's survey, and from thence in a straight line to the place of beginning at the mouth of the Salado, shall constitute a County, and shall be called the County of Webb.

SEC. 2. *Be it further enacted*, That the town of Laredo shall be the County seat of the County of Webb.

SEC. 3. *Be it further enacted*, That the above named County shall be organized according to the laws regulating the organization of counties in this State.

SEC. 4. *Be it further enacted*, That this act take effect and be in force, from and after its passage.

Approved, January 28, 1848.

## CHAPTER 24.

An Act prescribing the proof necessary for the heirs or legal representatives of those who fell under the command of Fannin, Travis, Grant, and Johnson, to obtain their headright certificates.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That in all suits instituted in the District Courts, under the provisions of the eleventh section of "an act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants" approved February 4th, 1841, by the heirs or legal representatives of those who fell under the command of Fannin, Travis, Grant, and Johnson, in the spring of one thousand eight hundred and thirty six,

for the purpose of obtaining head right certificates of the first class, a certificate from the officer having the custody of the archives of the late Department of War and Marine of the Republic of Texas, attested by the seal of his office, that the person in right of whom such headright certificate is claimed, appears from the record of said office to have belonged to the command of either of the aforesaid officers, shall be sufficient proof to authorize the issuance of such headright certificates; and that this act shall be in force from and after its passage.

Approved, February 2, 1848.

## CHAPTER 25.

Joint Resolution instructing our Senators and requesting our Representatives in Congress to procure the passage of a law to compel the Judge of the United States District Court for the District of Texas, to reside and remain permanently within his District.

Whereas in the opinion of the Legislature of the State of Texas, all Courts are ordained and established for the general good of the people, and the well being of society :

And, whereas, in order to the prompt and proper administration of the laws through the Courts, it is necessary, that the Judges thereof shall at all reasonable times, be found within their several Districts.

And, whereas, the present Judge of the United States District Court for the District of Texas, has since his appointment to that important office remained but a small part of the time within his said District, Therefore,

*SECTION 1. Be it resolved by the Legislature of the State of Texas, That our Senators in Congress be instructed, and our Representatives requested to use their influence to have a law passed by the Congress of the United States requiring the Judge of the United States District Court for the District of Texas, to remain within his said District, not less than ten months of each year, on penalty of forfeiting his office.*

*SEC. 2. Be it further resolved, That the Governor furnish*

each of our Senators and Representatives in Congress, with a copy of this Joint Resolution, and that this Joint Resolution take effect from and after its passage.

Approved, February 2, 1848.

## CHAPTER 26.

Joint Resolution requesting the Senators and Representatives of Texas in the Congress of the United States to protest against the relinquishment of the Mexican Provinces or States, conquered by, and in possession of the United States, without indemnity, and also to protest against any law which shall be intended to prevent the citizens of slave-holding States from taking their property with them, in emigrating to said acquired territory.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That in the opinion of this body, the existing war between the United States and Mexico, was rendered necessary, and was brought on by the acts and outrages of the latter; that its moral responsibilities therefore, must devolve upon that nation alone; and that it would be, under such circumstances, derogatory to the rights and dignity of the United States, to surrender to Mexico, by treaty or otherwise, the Provinces or States of Mexico which she has been compelled to take possession of, and now holds, by right of conquest, unless Mexico shall make complete and full indemnity for the injuries and aggressions which provoked the war, and also for the expenses incurred by the United States in the prosecution of it.

SEC. 2. *Be it further resolved*, That while such a course on the part of the United States is demanded by every consideration of justice and self respect, it is at the same time the opinion of this Legislature that the territory which may be permanently held by the United States, belongs equally to all the States, and that any attempt by the Federal Government to prevent the citizens of the slave-holding States from taking their property of whatever description with them in emigrating

to, and settling in said acquired territory, would be a violation of the Constitution, an insult to the southern people, and an outrage upon the sacred rights and privileges, which it is the object of all good governments to protect.

**Sec. 3.** *And be it further resolved,* That our Senators and Representatives in Congress be requested to protest against and oppose such a relinquishment of territory, and such an unlawful restriction upon the South as alluded to above, and that said members be furnished, each, with a copy of these Resolutions.

Approved, February 2, 1848.

## CHAPTER 27.

An Act to repeal the laws of the late Republic of Texas creating a Board of Medical Censors.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That an act, entitled "an act to create a Board of Medical Censors for the Republic of Texas," approved December 14th, 1837; also, an act, entitled "an act supplementary to an act to appoint a Board of Medical Censors," approved December 16th, 1837, be, and the same are hereby repealed.

**Sec. 2.** *Be it further enacted,* That this act take effect and be in force from and after its passage.

Approved, February 2, 1848.

## CHAPTER 28.

Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their influence to procure the incorporation of the officers of the late Navy of Texas into the Navy of the United States.

Whereas, there were connected with the great measure of

our annexation to the Confederacy of which we are now a member, various reciprocal rights and conditions, prescribed by the terms thereof, as well as others clearly implied, and fairly deducible from the same, all of which Texas has on her part fully and completely redeemed:

And, whereas, it is the opinion of this Legislature, that the officers of our late Navy, by a liberal and just, if not by a strictly legal construction of the terms of annexation, should be incorporated into the Navy of the United States, in their several ranks, and that they are justly entitled to the same, as well from the construction here claimed as from their high character, personal and professional, and the zeal, fidelity, patriotism and valor, with which they sustained the cause of their country while its Navy was in existence; Therefore,

SECTION 1. *Be it resolved by the Legislature of the State of Texas,* That our Senators are hereby instructed, and our Representatives in Congress requested to use their influence to procure the passage of a law by the Congress of the United States, incorporating the officers of the late Navy of Texas, into the Navy of the United States in the rank which they severally held in the late Navy of Texas.'

SEC. 2. *Be it further resolved,* That the Governor be requested to cause copies of this Joint Resolution, to be immediately forwarded to each of our Senators and Representatives in Congress.

Approved, February 2, 1848.

## CHAPTER 29.

An Act to create a lien on domestic vessels for supplies and materials furnished them, and for repairs and labor done thereon.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That every person who may furnish supplies or materials, or do repairs or labor, for or on account of any domestic vessel, owned in whole or in part in this State, shall have a lien on such vessel, her tackle, apparel, furniture, and freight money, for the security and payment of the same.



**Sec. 2.** *Be it further enacted,* That the provisions of the first section of this act, shall not be construed to alter or affect in any way the general law regulating the liens of seamen, or liens on foreign vessels.

Approved, February 3, 1848.

## CHAPTER 30.

An Act to provide for locating the Seat of Justice for the County of Newton.

Whereas, an act to create the County of Newton, approved on the 22d April, 1846, and the third and fourth sections of said act, created a Board of Commissioners, and provided for the mode of selecting and creating a Seat of Justice for said County:

And whereas, the inhabitants of said County have failed to create a Seat of Justice for said County under the provisions of said act: Therefore,

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the County Seat of Newton County shall be established and located, on a tract of land belonging to John R. Burke, on the waters of Little Cow Creek, and on the North East corner of a league of land known as the head-right of Richard Simmons.

**SEC. 2.** *Be it further enacted,* That the Seat of Justice for said County shall be styled and known by the name of Burkeville.

**SEC. 3.** *Be it further enacted,* That the Chief Justice and County Commissioners of the County Court of Newton, be authorized to receive by donation from John R. Burke, lands for public buildings for said county, and also for public schools and for other purposes.

**SEC. 4.** *Be it further enacted,* That all courts of law and equity for said County of Newton be required to be held at the town of Burkeville in said County.

**SEC. 5.** *Be it further enacted,* That this act be in force and take effect from and after its passage, and that all laws con-

flicting with the provisions of this act be and the same are hereby repealed.

Approved, February 10, 1848.

## CHAPTER 31.

An Act to create the County of Starr.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all that territory within the present county of Nueces, fronting on the Rio Grande, and not included in the counties of Webb, Cameron, and Nueces be, and the same shall constitute a County to be called the County of Starr.

SEC. 2. *Be it further enacted*, That the town of Rio Grande shall be the County Seat of the County of Starr.

SEC. 3. *Be it further enacted*, That the above named County shall be organized according to the laws regulating the organization of Counties in this State.

SEC. 4. *And be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, February 10, 1848.

## CHAPTER 32.

An Act to locate the County Seat of Navarro County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That Thomas I. Smith, William F. Henderson, Ethan Melton, James A. Johnson, and James Riggs, be, and they are hereby appointed Commissioners, whose duty it shall be to select the most suitable portion of the survey marked on the map of the Robertson land District in the name of G. A. Campbell, of one third of a league, situate on a southern tributary of Pecan Creek in the neighborhood of what is known as Rich-

ardson's settlement, and the point thus selected, shall be, and the same is hereby declared the County Seat of Navarro County, to be called by the name of Corsicana; and the various Courts of said County shall be held thereat, and all process civil and criminal shall be returnable thereto, which may be issued after the first day of March, 1848, and that this act, shall not be construed so as to effect any writ, process, or other proceeding in any of the Courts of said County.

SEC. 2. *Be it further enacted*, That a majority of said Commissioners shall have full power to transact any business contemplated by this act.

SEC. 3. *Be it further enacted*, That the said Commissioners shall purchase at the expense of said County, not exceeding one hundred and sixty acres of land, except the same can be procured by donation, in which case an amount not exceeding six hundred and forty acres, may be secured to lay off the same or such portion thereof as to them may seem proper, in convenient lots and squares, and dispose of the same by public sale, reserving suitable lots or squares for the use of a Court House, Offices for the County Officers, Jail, School Houses, and Churches, in the discretion of said Commissioners and to make titles to any purchaser, and to the County, of the reserves, specifying the object of the reserve; to erect a Court House and Offices for the Clerks, and a jail, and such other public buildings, as to the said Commissioners may seem necessary, and to apply the proceeds of the sale of lots in payment therefor, and to perform generally whatever may be necessary to carry out the intent and meaning of this act.

SEC. 4. *Be it further enacted*, That it shall be the duty of said Commissioners to make a full exhibit of their proceedings to the County Court of said County, within eighteen months from the passage of this act, at which time their functions shall cease, unless the County Court shall extend the time of their services.

SEC. 5. *Be it further enacted*, That all laws and parts of laws contravening the provisions of this act, be and they are hereby repealed, and that this act take effect from and after its passage.

Approved, February 12, 1848.

## CHAPTER 33.

An Act better defining the boundaries of Nueces County.

SECTION. 1. *Be it enacted by the Legislature of the State of Texas,* That the County of Nueces shall hereafter have the following bounds and limits, to wit: Commencing at the northeast corner of Webb County on the Nueces river; thence down said stream to its mouth; thence along the coast to the mouth of the Olmos creek; thence in a northwesterly course on a direct line, until it intersects midway the lower boundary line of Webb county; thence along said line to the place of beginning.

SEC. 2. *Be it further enacted,* That this act take effect and be in force from and after its passage.

Approved, February 12, 1848.

## CHAPTER 34.

An Act to define the county boundaries of Goliad County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That all the territory comprised within the limits hereinafter prescribed, shall form and compose the County of Goliad, to wit: Beginning on the Coletto creek, on the line of Refugio district, being the upper line as run by William Richardson, deputy surveyor of Refugio county, and running with said line to the Aransas river; thence up said river with the meanders, to the crossing of the Mier road; thence N. W. to the line of Bexar district; thence with said line to the San Antonio river, at the mouth of the Cibolo; thence N. 15 deg. East to the Gonzales district line; thence with said line South Easterly to the intersection of the N. W. boundary of De Witt County; thence with said boundary S. 51 deg. W. to the W. corner thereof, as established by an act of the Legislature in 1848; thence S. 39 deg. E. with the S. W. boundary line of De Witt County, to a point S. 51 deg. W. of the S. corner of Gonzales district; thence N. 51 deg. E. to the Coletto creek, and down the same to the beginning.

SEC. 2. *Be it further enacted*, That this act take effect, and be in force from and after its passage, all laws and parts of laws to the contrary notwithstanding.

Approved, February 12, 1848.

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## CHAPTER 35.

A Bill to be entitled An Act to create the county of Cameron.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all the territory embraced within the following limits, to wit; Commencing at the mouth of Olmos creek on the coast, being the southern point of the county of Nueces, and running thence along the coast of the Gulf to the mouth of the Rio Grande; thence up the Rio Grande to a point where the upper line of the municipality of Reynosa strikes the same; thence in a North Easterly direction until it strikes the South Western boundary of Nueces County at right angles; thence South Easterly along the same, to the place of beginning, shall constitute the County of Cameron.

SEC. 2. *Be it further enacted*, That the town of Santa Rita shall be the County seat of the County of Cameron.

SEC. 3. *Be it further enacted*, That the above named county shall be organized according to the laws regulating the organization of Counties in this State.

SEC. 4. *And, be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, February 12, 1848.

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## CHAPTER 36.

An Act creating the County of Medina,

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all that territory included within the County of

Bexar, beginning on the South bank of Medina river, at the upper corner of a league survey No. 25, made for Wm. E. Howth, assignee of Maria Jesusa Hernandez, being the lower corner of survey No. 26 in the name of Julia Contes; thence, South 16 miles; thence West 36 miles; thence north 36 miles; thence East to the Medina river; thence down the Medina on its West bank to the beginning, be, and the same is hereby created a new County, to be known and called by the name of Medina.

SEC. 2. *Be it further enacted*, That the town of Castroville on the West bank of the Medina river, be, and the same is hereby established as the County seat of said County of Medina.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Chief Justice of Bexar County to cause an election to be held on the second Monday of July, 1848, in accordance with the method prescribed by an Act to provide for the organization of the several counties in the State, approved, April 11, 1846, (for the purpose of electing County officers) for the County of Medina.

SEC. 4. *Be it further enacted*, That this act take effect from and after its passage.

Approved, February 12, 1848.

## CHAPTER 37.

An Act to amend the third section of an act, providing for the transfer of the records of administrators to new Counties, approved 13th May, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the third section of an act providing for the transfer of records of administrators to new Counties, approved 13th May, A. D. 1846, be so amended as to read as follows, to wit: In all cases when the papers and proceedings, relating to the settlement of an estate, shall be transmitted to any Court in the manner provided for in this act, such estate shall be proceeded in and settled in the Probate Court of such County, in

like manner as if the settlement of such estate had been originally commented in such County, and the transcript of the record transmitted in the manner provided for in this act, shall have the same force and effect in evidence as the record itself might or could have: *Provided*, that the provisions of this act shall not extend to the Counties of Jackson, Victoria, Gonzales, Bexar, Goliad, Refugio, and San Patricio.

SEC. 2. *Be it further enacted*, That this act take effect from its passage.

Approved, February 14, 1848.

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## CHAPTER 38.

An Act to amend the third section of an Act, entitled "an Act concerning Slaves," approved February 5th, 1840.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the third section of an Act, entitled an Act concerning slaves, approved February 5th, 1840, be so amended as to read as follows, to wit: That if any person or persons shall cruelly or unreasonably treat or abuse any slave belonging to him, her or them, or to another or others, he she, or they and each of them shall be liable to indictment or presentment, as for a misdemeanor, in the District Court, and on conviction thereof, may be fined for each and every such offence, not less than twenty dollars, nor more than five hundred dollars.

Approved, February 14, 1848.

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## CHAPTER 39.

Joint Resolution, authorizing the Comptroller of Public Accounts to provide a residence in the City of Austin for the use of the Governor of the State.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the Comptroller of Public Accounts be, and he is

hereby authorized to provide a suitable residence for the accommodation of the Governor of the State; provided the expense shall not exceed five hundred dollars annually.

SEC. 2. *Be it further resolved*, That the Comptroller, for said purpose, shall be authorized to make use of one of the buildings belonging to the State, or rent a private building, as he may think best and most convenient for the Governor.

SEC. 3. *Be it further resolved*, That the Comptroller be required to collect all the furniture heretofore belonging to the President's House, that can be come at, to furnish said residence so provided for the Governor.

SEC. 4. *And be it further resolved*, That this joint resolution be in force from and after its passage.

Passed, February 16, 1848.

## CHAPTER 40.

An Act to amend an Act, entitled "an Act to prescribe the time of the biennial meeting of the Legislature of the State of Texas."

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the first section of the above, entitled Act, approved 11th April, A. D. 1846, be so amended as to read thus:

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Legislature of the State of Texas, shall meet at the Seat of Government thereof and begin their next biennial Session on the first Monday in November, A. D. 1849, and biennially thereafter on the same day, until otherwise prescribed by law.

Approved, February 18, 1848.



## CHAPTER 41.

An Act to define the boundary lines of the County of Matagorda.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the boundary lines of the County of Matagorda, shall hereafter be as follows: Beginning at the entrance of Cedar Lake, into the Gulf of Mexico; thence up said lake with the Western boundary line of Brazoria County, and along said line to the North West corner of a league of land granted to Garrett, on the lower line of league No. 12, granted to S. Ingram; thence in a South Westward direction to the Southwest corner of a league of land, granted to Edwards; thence South, sixty degrees West, with the lower line of Wharton County to its junction with the Eastern boundary line of Jackson County; thence down said Eastern County line of Jackson County to its junction with the Calhoun County line; thence with the Calhoun County line to the Southeast corner of J. Hughson's league on Matagorda bay; thence in a line to the main Matagorda pass, so as to include all the Peninsula and Pelican Island; thence Eastwardly around the shore of the Gulf of Mexico, to the place of beginning.

SEC. 2. *Be it further enacted,* That all laws conflicting with the provisions of this Act, be, and the same are hereby repealed, and this Act shall take effect from and after its passage.

Approved, February 18, 1848:

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CHAPTER 42.

An Act to change the name of Thomas Harvey to Thomas Harvey Forrester.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the name of Thomas Harvey of Matagorda County, be changed and altered to that of Thomas Harvey Forrester.

SEC. 2. *Be it further enacted,* That this act take effect from and after its passage.

Approved, February 18, 1848.

## CHAPTER 43.

Joint Resolution authorizing and requiring the Governor to subscribe for three hundred copies of the Reports of Decisions of the Supreme Court of this State.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the Governor be, and he is hereby authorized and required, to subscribe for three hundred copies of the decisions of the Supreme Court of this State, now being prepared for publication by a Reporter appointed by said Court, provided, that the cost shall not exceed six dollars per volume.

SEC. 2. *Be it further resolved*, That a sufficient amount be, and is hereby appropriated for the payment of said Reports, which shall be paid on the warrant of the Comptroller, out of any money in the Treasury, not otherwise appropriated, whenever the Governor shall certify that said Reports have been delivered.

Approved, February 18, 1848.

## CHAPTER 44.

An Act to organize the Militia of the County of Newton.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the inhabitants of the County of Newton, subject to do military duty, shall constitute one Battalion for Military purposes, and be entitled to elect all the officers to which one Battalion may be entitled by "an Act to organize the Militia of the State of Texas," approved 21st April, A. D. 1846.

SEC. 2. *Be it further enacted*, That the Militia of said County shall be included in the same Military division to which the Militia of the County of Jasper belongs.

SEC. 3. *Be it further enacted*, That the election for officers of said Battalion shall take place on the day, and in the same manner as elections for County officers.

SEC. 4. *Be it further enacted*, That all laws and parts of

laws, conflicting with the provisions of this Act, be, and the same are hereby repealed.

Approved, February 18, 1848.

## CHAPTER 45.

Joint Resolution requiring the Attorney General to investigate the condition of the titles to the various Islands within the limits of Texas, and if it be expedient to cause legal proceedings to be instituted against persons claiming the same, adversely to the State;

SECTION. 1. *Be it resolved by the Legislature of the State of Texas,* That the Attorney General, be required to investigate the condition of the claim and title of the State, to the various Islands included within the limits and jurisdiction of Texas, as defined by the laws of the late Republic, and if in his judgment it be expedient, to cause legal proceedings to be instituted in the proper State Courts against any person or persons, claiming any Islands or parts of Islands, adversely to the State, for the purpose of determining the validity of such claims, and that he report his proceedings in the premises, and such information as he may obtain to the Governor, annually, that the same may be transmitted to the next Legislature.

Approved, February 21, 1848.

## CHAPTER 46.

Joint Resolution instructing our Senators and requesting our Representatives in the Congress of the United States to procure additional Mail Service.

SECTION 1. *Be it resolved by the Legislature of the State of Texas,* That our Senators be instructed, and our Representa-

tives requested, to procure the establishment of the following additional Mail Routes, viz:

1st. From the City of Austin to Fort Towson, via the Falls of the Brazos, Springfield, Tiwackany Hills, Corsicana, Porters Bluff, Paris, and from Springfield via Buffalo on Trinity River, once a week.

2d. From Cameron in Milam County, to Crockett, via Nashville, Wheelock, Leona, and Alabama, once a week.

3d. From Buffalo to Washington via Fanthorps, once a week.

4th. From Porters Bluff on Trinity River, in Navarro County to Marshall, via Tyler in Smith County, and Gilmer and Wilburns in Upsher County, once a week.

5th. From Clarksville to Shreveport, via Marshall and Jefferson once a week, in Coaches.

6th. From Sabine Pass, to San Augustine via Beaumont, Erin, Big Creek, Jasper, Zavalla, Lowe's Mills, Norvill's and Kendrick's.

7th. From Sabine to Huntsville, via Burkeville, Newton C. H., Jasper, Bevil Port, Ratliff's, Wilson's, Greene's, Livingston, Polk C. H., Swartwout and McGee's.

8th. From Gonzales to Goliad.

9th. From Hodge's Post Office, in Fort Bend County to Arnold's P. O. in Austin County, via Gaston's, Wade's, and Stephen Tippet's, once a week.

10th. From Houston to Gonzales, via Richmond, Colu and Petersburg.

11th. From Galveston to Columbia, via Virginia Point, Liverpool, Gustavus, Burtrand's, Parker's Point, and Garen Hine's.

12th. From Pass Caballo to Corpus Christi, via Lamar, Copano, and Aransas Pass.

13th. From Lagrange to Goliad, via Chisholm's Ferry.

14th. From Indian Point, to Victoria.

15th. From San Antonio to Victoria, via Goliad, once a week.

16th. From Refugio to Lamar.

17th. From Columbia to Matagorda, via Brazoria, Cedar Lake, and Caney, once a week.

18th. From Port Caddo to Mooresville, in Bowie County, via Clinton in Cass County.

- 19th. From Lagrange to Texana, via Lyon's, Petersburg, and Kerrs, once a week.
  - 20th. From Houston via Fanthorp's to Springfield.
  - 21st. From Galveston to San Augustine, via Anahuac, Liberty, and Livingston.
  - 22d. Increase the service on Routes from Galveston to Austin, three times a week.
  - 23d. Change the Route from Washington to LaGrange, via Independence, Brenham, and Montville.
  - 24th. From Port Lavaca, via Victoria, Cuero, Gonzales, Seguin, New Braunfels, to San Antonio, twice a week.
  - 24th. From San Antonio to Laredo.
  - 26th. From Austin, via Youngs's Settlement, to Caldwell, once a week.
  - 27th. From San Antonio to Castroville, once a week.
  - 28th. From Braunfels to Fredericksburg, once a week.
  - 29th. From Washington via Fanthorps to Huntsville, once a week, in coaches.
  - 30th. From San Felipe to Washington via new County Seat of Austin County, once a week.
  - 31st. From Corpus Christi to the County Seat of Cameron County, once a week.
  - 32d. From Corpus Christi to Rio Grande City, once a week.
  - 33d. From Corpus Christi to Laredo, once a week.
  - 34th. From the mouth of the Rio Grande to Laredo by Steam Boat or land, via Rio Grande City, once a week.
- Approved, February 21, 1848.

## CHAPTER 47.

An Act to create the County of Gillespie, so named in honor of Captain Robert A. Gillespie, who fell at the battle of Monterey.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all that territory in Bexar County included within the following limits, to wit; Beginning on the South bank of the Pierdenales river, at the point where the dividing line of

the Counties of Bexar and Travis crosses said river; thence with said dividing line North, seventeen degrees East, sixty-seven thousand seven hundred and fifty varas; thence West, one hundred and two thousand and sixty-eight varas; thence South eighty-two thousand varas; thence East seventy-seven thousand varas, to the said dividing line of the counties of Bexar and Travis; thence North, seventeen degrees East, along said dividing line, one thousand eight hundred varas to the place of beginning, be, and the same is hereby created a new county to be called the county of Gillespie, in honor of Captain Robert A. Gillespie, who fell at the battle of Monterey.

SEC. 2. *Be it further enacted*, That the town of Fredericksburg shall be the County Seat of the said County of Gillespie.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Chief Justice of Comal County to order an election to be held in the town of Fredericksburgh on the first Monday of June next, for the several County Officers, of the said County of Gillespie, said election to be, in all respects conducted in conformity to the general election laws, and the returns of the said election shall be made to the Chief Justice of Comal County, whose duty it shall be to issue certificates of election to the persons entitled to receive the same.

SEC. 4. *Be it further enacted*, That the County Court of said County of Gillespie, shall organize and hold its first session on the second Monday in July next and shall then, or as soon after as practicable elect a County Treasurer, and divide the County into convenient Precincts for the election of Justices of the Peace and Constables.

SEC. 5. *Be it further enacted* That this act take effect from and after its passage.

Approved, February 23, 1848.

## CHAPTER 48.

An Act to establish the Seat of Justice of Denton County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the County Seat of Denton County, shall be on

Section one, Township No. four North, in Range No. three West in Peters Colony.

SEC. 2. *Be it further enacted*, That Joseph Turner, Jesse Gibson, John Ramsey, James Dickson, and John W. King, be, and they are hereby appointed Commissioners, a majority of whom shall appoint quorum for the transaction of business, whose duty it shall be to receive by donation or purchase so much of said Section No. one, in Township No. four, as will be sufficient for a County Seat, not less than forty acres, for the use of said county of Denton, and the place so selected shall be known and called Alton.

SEC. 3. *Be it further enacted*, That said Commissioners shall proceed to lay off a town, on said tract of Land into lots of convenient size, and sell the same at public auction on a credit of twelve months payable to the county of Denton, and the funds arising from the sale of lots or other donations shall be applied by the Commissioners herein created to the erection of public buildings for the use of said county.

SEC. 4. *Be it further enacted*, That the District and County Courts for the County of Denton shall be held at the town of Alton, and all writs heretofore issued returnable to Pinckneyville shall be returned to and tried at the town of Alton, and that all laws conflicting with this act, be, and they are hereby repealed, and that this act take effect from and after the first day of June, 1848.

Approved, February 24, 1848.

## CHAPTER 49.

An Act Supplementary to an act, entitled "an act to create the County of Smith," approved, April 11th, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That an act entitled "an act to create the county of Smith," approved April 11th, 1846, be so amended as to read: That it shall be the duty of the Commissioners appointed by the above recited act, to pay out of the proceeds of the sale of

town lots the County Seat of said County, the amount stipulated by them to the contractors for building a Court House in said county, and to sell the remainder of said lots if any there be, and apply the proceeds thereof to the completion of a good and substantial Court House and Jail, and such other public buildings as they may deem necessary for the use of said county; to pay over to the County Treasurer of said county the overplus if any, after paying the necessary expense incurred by them in carrying out the provisions of this act.

SEC. 2. *Be it further enacted*, That all the acts and doings of said Commissioners in relation to the building of the Court House in said county, be and they are hereby legalized and made valid as if provided for in the above recited act.

SEC. 3. *Be it further enacted*, That all laws conflicting herewith be repealed, and that this act take effect from and after its passage.

Approved, February 26, 1848.

## CHAPTER 50.

### An Act to establish the County Seat of Grimes County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That there shall be an election held at the several precincts in Grimes County on the first Monday in May next, for the location of a seat of justice for said County, which shall be ordered by the Chief Justice of said county and conducted in conformity to law.

SEC. 2. *Be it further enacted*, That it shall be the duty of the County Court of said County to receive and make public, at the different public places in said county, by posting up advertisements, at least one for each election precinct, such propositions as may be offered as inducements in favor of the selection of places proposed as suitable locations for the County Seat of said county.

SEC. 3. *Be it further enacted*, That all propositions submitted to the County Court, in compliance with the second section



of this act, shall be in the nature of penal bonds, payable to the Chief Justice of said County and his successors in office, recoverable in the District Court in and for said County, for the use of the County.

Sec. 4. *Be it further enacted*, That the said County Court may receive donations of land, by deeds or bonds made to the Chief Justice of said county and his successors in office, which land shall be the property of the county, and the proceeds of the sale thereof applied to the erection of county buildings.

Sec. 5. *Be it further enacted*, That when the returns of said election shall be made in conformity with law, the County Court shall meet at the usual place of holding courts, and count the number of votes given for each of the places put in nomination, and if any one of them shall have received a majority of all the votes polled at said election, the same shall be declared the seat of justice for the County of Grimes: but if neither place shall have received a majority of all the votes, the Chief Justice shall put in nomination the two places which have received the highest number of votes, and advertise another election, by giving at least ten days notice, stating the two places put in nomination: On the return day of said second election, the Court shall meet and count the votes given, and the one having received the highest number of votes shall be declared the seat of justice of Grimes County. *Provided* the county seat shall be located within seven miles of the centre of said county, and shall be called and known by the name of Anderson.

Sec. 6. *Be it further enacted*, That the County Court of said County shall have the land so donated and conveyed laid off into town lots of convenient size, order the sale and apply the proceeds to the building of such necessary public buildings as in their discretion may be most conducive to the interest and advantage of the County.

Sec. 7. *Be it further enacted*, That so soon as the necessary offices are erected by the court, or its order, the county officers shall remove thereto, with their records, books, papers, &c.; all courts thereafter shall be held at said town of Anderson.

Approved, February 26, 1848.

## CHAPTER 51.

An Act to define more correctly the boundaries of De Witt County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That all the territory comprised within the limits hereinafter prescribed shall form, and compose the county of De Witt, to wit: Beginning at the lower corner of a survey of one-fourth of a League of land granted to Jesse McCoy, standing on the North East bank of Guadalupe River in Gonzales County; thence running North fifty-one degrees East seven thousand three hundred varas; thence running South thirty-nine degrees East forty-seven thousand varas; thence running South fifty-one degrees, West to the intersection of the Coleta creek; thence up the Coleta to the intersection thereof by the District line of Gonzales District; thence South fifty-one degrees West to a point that will be South fifty-one degrees West eighty-two thousand varas from the North East boundary line of said county; thence North thirty-nine degrees West to the intersection of a line running South fifty-one degrees West from the one-fourth of a league of land granted to Jesse McCoy; thence North fifty-one degrees East to the place of beginning.

SEC. 2. *Be further enacted,* That this act take effect and be in force from and after its passage, and that "an act creating the county of De Witt," approved March 24th 1846, be, and the same is hereby repealed.

Approved, February 26, 1848.

## CHAPTER 52.

An Act to create the County of Kaufman.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the following be and they are hereby established, as the permanent boundaries of a new County, to be known and called by the name and style of Kaufman, to wit: beginning on the North East corner of Dallas County, and running thence South, with the East boundary line of said County, to the Trinity River, thence down said river to a point on the

same, eight miles on due course from the first corner on said River, thence north forty five degrees, to a point due East of the South East corner of Dallas County as established by Albert J. Walker, thence due East to a point thirty six and one half miles East of said South East corner of Dallas County, thence due North to the South boundary line of Hunt County; thence West with the South boundary of Hunt County, to the South West corner of the Same; thence due North to the South East corner of Collin County; thence West with the South boundary of Collin County to the place of beginning.

SEC 2. *Be it further enacted*, That Parson — Sherwood, John J. Buck, Senr., Adam Sullivan, Parson H. J. McKensie, William Price, S. G. Parsons, and Abner Johnson be and they are hereby appointed Commissioners, with authority to select, not exceeding three places to be put in nomination, as the County site of said County, one of which shall be at the centre of said County to be ascertained by actual survey, which survey said Commissioners are hereby authorized to have made at the expense of the County, and the other two places shall be within five miles of the centre of said County, the said Commissioners shall then proceed to order an election, between the different places, put in nomination for the County site of said County, by giving a written notice to be posted up at not less than five public places in said County for the term of one month, which notice shall specify the different places put in nomination, and the election shall be governed according to the laws regulating elections generally, and the returns made to the Commissioners herein appointed at a day and place to be named in the writs of election, not to exceed ten days from and after the day of election, and said election returns shall not be opened by less than a majority of said Commissioners, when if any place nominated or voted for, within five miles of the centre shall receive a majority of all the votes polled, it shall be duly declared to be the County Seat of said County by said Commissioners, but if no place receive a majority of all the votes given, then the said Commissioners shall put in nomination, the two places that received the highest number of votes, at the first election, giving fifteen days notice of said election by posting up notices at not less than five public places in said County, the result of which shall be ascertained, as in the first election, provided for, in this act, and the place receiving the highest number of votes shall be declared by said

Commissioners the County Seat of said County and the said Commissioners are hereby required to order the first election contemplated by this act, on the first day of April next, or as soon thereafter as this act shall come to their knowledge.

SEC. 3. *Be it further enacted*, That the Commissioners here-in appointed are required to take into consideration, in the nomination of places for a County Seat, donations in land or money as well as eligibility of site, timber and water.

SEC. 4. *Be it further enacted*, That should said Commissioners select a tract of vacant and unappropriated land, on which to locate said County seat, they shall proceed to condemn to the use of the County, a tract of not more than five hundred acres of land, and this act shall be a sufficient authority to any authorized surveyor to survey for said County, the amount of land pointed out by said Commissioners, not to exceed five hundred acres in a square form, if pre existing lines will admit of that shape, and when said Commissioners, their successors, or agent, shall present to the Commissioner of the General Land Office the receipt of the State Treasurer, for the sum of fifty cents an acre, in gold or silver for the amount of land contained in the survey authorized by this act to be made, then said Commissioner of the General Land Office, shall issue a patent to the County of Kaufman for said land.

SEC. 5. *Be it further enacted*, That the said Commissioners or their successors, or a majority of them, be, and they are hereby authorized to lay out a town on said tract to be known and called by the name and style of Kaufman, reserving a suitable public square for a Court House and suitable lots for a Jail and such other public buildings as they may deem necessary for the use of the County; and sell the other lots and lands to the highest bidder at such time or times, and such terms and conditions as they may deem best for the interest of the County; the proceeds of which sales shall be applied to the erection of public buildings for the use of the County by said Commissioners or their legal successors, provided, that after the erection of suitable public buildings, the remainder of the proceeds derived from the sale of lots and lands may be transferred to the ordinary County fund.

SEC. 6. *Be it further enacted*, That said Commissioners shall at their first meeting select from among themselves a presiding officer, who when elected shall have power to convene the other Commissioners to transact any business required

of them by this act, a majority of whom in all cases may act, and said Commissioners before they enter upon the discharge of the several duties herein required, shall take an oath, faithfully and impartially, to discharge the duties required of them by this act, before some acting Justice of the Peace.

SEC. 7. *Be it further enacted*, That whenever the County Court of Kaufman County, shall be properly organized, it shall be the duty of the Chief Justice to notify the Commissioners herein appointed to come forward and make a settlement with the County Courts, and a surrender of their books as commissioners of said County, together with a full and fair statement of all the sales made, moneys and liabilities received, and moneys paid out, and thereafter their authority as Commissioners shall cease and their duties shall devolve upon the County Court.

SEC. 8. *Be it further enacted*, That the citizens of Kaufman County are entitled to all the privileges, offices and Courts, that other Counties in this State are entitled to.

SEC. 9. *Be it further enacted*, That it shall be the duty of the Chief Justice of Henderson County at the time he orders the election for County officers of Henderson County for the regular election in July A. D. 1848, to also order the election of all County officers of Kaufman County, and the votes polled in Kaufman County, shall be returned to the Chief Justice of Henderson County, who shall issue certificates of election to the officers elect of Kaufman County, at the time and in the manner, that he is required to issue certificates of election to the officers of Henderson County.

SEC. 10. *Be it further enacted*, That the Commissioners herein appointed shall be allowed and paid out of the county Treasury of Kaufman county, the sum of one dollar per day, each, for every day they may be necessarily employed in the discharge of the duties herein assigned them.

SEC. 11. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

Approved, February 26, 1848.

## CHAPTER 53.

An Act to establish the Judicial Districts of the District Courts.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the following named Counties, shall compose the first Judicial District, to wit: Matagorda, Wharton, Colorado, Austin, Fort Bend, Brazoria and Galveston.

SEC. 2. *Be it further enacted,* That the following named Counties shall compose the second Judicial District, to wit: Gillespie, Comal, Guadalupe, Fayette, Bastrop, Travis, Caldwell and Hays.

SEC. 3. *Be it further enacted,* That the following named Counties, shall compose the third Judicial District, to wit: Brazos, Robertson, Leon, Limestone, Navarro, Milam, Burleson and Washington.

SEC. 4. *Be it further enacted,* That the following named Counties shall compose the fourth Judicial District, to wit: Bexar, Medina, Webb, Starr, Cameron, Nueces, San Patricio and Refugio.

SEC. 5. *Be it further enacted,* That the following named Counties shall compose the fifth Judicial District, to wit: Nacogdoches, Shelby, Angelina, Sabine, San Augustine, Jasper and Newton.

SEC. 6. *Be it further enacted,* That the following named Counties, shall compose the sixth Judicial District, to wit: Rusk, Upshur, Smith, Cass, Harrison, Panola and Cherokee.

SEC. 7. *Be it further enacted,* That the following named Counties shall compose the seventh Judicial District, to wit: Harris, Montgomery, Walker, Grimes, Liberty, Polk, Tyler and Jefferson.

SEC. 8. *Be it further enacted,* That the following named Counties shall compose the eighth Judicial District, to wit: Bowie, Red River, Titus, Lamar, Hopkins, Hunt and Fannin.

SEC. 9. *Be it further enacted,* That the following named Counties shall compose the ninth Judicial District, to wit: Grayson, Collin, Denton, Dallas, Kaufman, Henderson, Anderson, Houston and Van Zandt.

SEC. 10. *Be it further enacted,* That the following named Counties shall compose the tenth Judicial District, to wit: Gonzales, Calhoun, Jackson, Victoria, Lavaca, De Witt and Goliad.

SEC. 11. *Be it further enacted*, That all laws and parts of laws conflicting with the provisions of this act, be, and the same are hereby repealed, and that this act take effect and be in force from and after the first day of August next.

Approved, February 26, 1848.

## CHAPTER 54.

An Act to be entitled "An Act prescribing in what cases, the Governor may remit fines and forfeitures."

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That after conviction the Governor shall without restriction have power to remit fines and forfeitures of a pecuniary character at his discretion, provided, that he shall report to the Legislature all cases in which he has remitted such penalties with his reasons for doing the same.

SEC. 2. *Be it further enacted*, That after conviction the Governor shall have power to remit forfeitures of lands or of rights and privileges, or of forfeitures of any character whatever, known to our laws, whenever he shall be memorialized by the Legislature in a Joint Resolution setting forth the character of the forfeiture which they may wish remitted.

SEC. 3. *Be it further enacted*, That this act shall be in force and take effect from and after its passage.

Approved, February 26, 1848,

## CHAPTER 55.

An Act to remove the Land Office of the Robertson Land District from Franklin in Robertson county to Springfield in Limestone County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be the duty of the District Surveyor of the

Robertson Land District to cause all the records, maps and other documents belonging to, or in any wise connected with the Land Office of the Robertson Land District, together with the desks, tables and other furniture belonging thereto, to be removed to the town of Springfield in Limestone County as soon as practicable, and the said Land Office shall remain and be kept at said town until otherwise ordered by law.

SEC. 2. *Be it further enacted*, That all laws or parts of laws conflicting with this act, be, and the same are hereby repealed, and that this act take effect from and after its passage.

Approved, February 29, 1848.

## CHAPTER 56.

An Act to be entitled an act to amend the first, third and seventh sections of "an act to define the time of holding the Courts in the several Judicial Districts of the State of Texas," passed May 11th, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*; That the first section of "an act to define the time of holding the Courts in the several Judicial Districts of the State of Texas," passed May 11th, 1846, shall be and is hereby amended, so that it shall hereafter read as follows, to wit:

That a District Court shall be held in each county of this State twice in each year; and such Court shall commence on the days, and may continue for the terms hereinafter specified.

The Courts in the first Judicial District shall commence,

In the county of Matagorda, on the first Mondays in April and October, and may continue in session one week.

In the County of Wharton, on the second Mondays in April and October, and may continue in session one week.

In the county of Colorado, on the third Mondays in April and October, and may continue in session one week.

In the county of Austin, on the first Mondays after the third Mondays in April and October, and may continue in session one week.

In the County of Fort Bend, on the second Mondays after the



third Mondays in April and October, and may continue in session one week.

In the County of Brazoria, on the the third Mondays after the third Mondays in April and October, and may continue in session two weeks.

In the County of Galveston, on the fifth Mondays after the third Mondays in April and October, and may continue in session until the business of the Court is disposed.

SEC. 2. That the third section of said act shall be and is hereby amended, so that it shall hereafter read as follows to wit:

That the Courts in the third Judicial District shall commence,

In the County of Brazos, on the first Mondays in March and September, and may continue in session one week.

In the County of Leon, on the second Mondays in March and September, and may continue in session one week.

In the County of Limestone, on the third Mondays in March and September, and may continue in session one week.

In the County of Navarro, on the fourth Mondays in March and September and may continue in session one week.

In the County of Robertson, on the second Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Milam, on the third Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Burleson, on the fourth Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Washington, on the sixth Mondays after the fourth Mondays in March and September, and may continue in session three weeks: *Provided*, however, that the first session of said Court, after the passage of this act, may continue in session four weeks.

SEC. 3. That the seventh section of said act, shall be and is hereby amended, so that it shall hereafter read as follows, to wit:

That the Courts of the seventh Judicial District shall commence,

In the County of Montgomery, on the first Mondays in March and September, and may continue in session two weeks.

In the County of Grimes, on the third Mondays in March and September, and may continue in session one week.

In the County of Walker, on the fourth Mondays in March and September, and may continue in session two weeks.

In the County of Polk, on the second Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Tyler, on the third Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Jefferson, on the fourth Mondays after the fourth Mondays in March and September, and may continue in session one week.

In the County of Liberty, on the fifth Mondays after the fourth Mondays in March and September, and may continue in session two weeks.

In the County of Harris, on the seventh Mondays after the fourth Mondays in March and September, and may continue in session until the business is disposed of.

SEC. 4. That all writs and process of every kind, that have been or may hereafter be issued from any of the District Courts of the first, third, and seventh Judicial Districts, shall be considered as returnable, and shall be returned to the terms as established by this act; and all such writs and process shall have the same force and effect as if they had originally been issued so returnable.

SEC. 5. That this act shall take effect and be in force from and after its passage.

Approved, February 29, 1849.

## CHAPTER 57.

### An Act to create the County of Hays.

SECTION 1. *Be it resolved by the Legislature of the State of Texas.* That the following described limits shall be known as the County of Hays, viz: Beginning on the San Antonio road, at the south corner of Musgrove's survey, being a corner of

Guadalupe county; thence with the San Antonio road North eastwardly to the W. corner of Bastrop county; thence N. 50 deg. W. 46 miles to a corner; thence with a line parallel to the San Antonio road, in a southwestwardly direction to a point being N. 50 deg. W. from the beginning; thence S. 50 deg. E. to the beginning.

SEC. 2. *Be it further enacted*, That the County seat shall be located at the town of San Marcos.

SEC. 3. *Be it further enacted*, That this act shall take effect from and after its passage.

Approved, March 1, 1848.

## CHAPTER 58.

An Act to prohibit the Boards of Land Commissioners in each County in this State from issuing certificates to any claimant whatsoever, unless the applicant or claimant shall previously thereto have received a conditional certificate from some competent Board.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Board of Land Commissioners, for each county in this State shall have no power to issue any certificate whatsoever, to any applicant, except to those who may apply for an unconditional certificate, having previously obtained a conditional one (granted during the period or time fixed for issuing conditional certificates, and at least three years prior to the time of application for an unconditional one,) which facts must be shown by the applicant by producing to the Board the original conditional certificate, or when it may have been located a certified copy of the Record of the Board issuing the same, and he shall also, make all the other proof now required by law.

SEC. 2. *Be it further enacted*, That no Board of Land Commissioners shall have power or authority after the expiration of two years from the passage of this act to issue unconditional certificates to any one.

SEC. 3. *Be it further enacted*, That all laws and parts of

laws conflicting with the provisions of this act, be, and the same are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved, March 1, 1848.

## CHAPTER 59.

### An Act to organize the Militia of Santa Fe.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the territory lying North and West of Fannin County, within the limits of Texas, commonly known as the District of Santa Fe, shall be attached to the first Division of Militia, composed of the counties of Fannin, Lamar, Red River and Bowie, and the persons therein liable to Military duty, shall be subject to the orders of the Major General of that Division and of the Governor, in conformity with the law, organizing the Militia of the State.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Governor, to issue a Proclamation, requiring an election for Brigade, Regimental and company officers in that District in conformity with law.

Approved, March 1, 1848.

## CHAPTER 60.

### An Act to be entitled an act to allow set off, in certain cases.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That in all cases where judgment has been recovered, or shall hereafter be recovered, by the State upon suits, now pending in any of the courts in this State against any person, upon any liability to the Republic or State, the Comptroller of Public Accounts, be, and he is hereby authorized and required

to allow all persons who are in such manner indebted to the late Republic as aforesaid, to liquidate and pay such judgment or any portion thereof by surrendering claims of equal value against said Republic which they have received, or which is due to said person at a par rate for advances made, or services rendered to the Republic by them.

SEC. 2. *Be it further enacted*, That the provisions of the first section of this act, shall not be construed to permit any of the liabilities of the Republic, to be received at a higher rate than they were paid out or acknowledged to be due at, by the late Republic, nor shall any party be permitted to pay the liabilities of said Republic issued to third persons or acquired by purchase, nor any other than such as shall be due and owing to the party to such suit or judgment at the time of the commencement of the suit: and further provided, that in all cases the defendant shall pay in par funds all costs and expenses the State or Republic have been put to in prosecuting such claim against any individual under the provisions of this act.

Passed, March 2, 1848.

## CHAPTER 61.

An Act authorizing the County Court of Fort Bend to levy an additional tax.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the County Court of Fort Bend County, be, and they are hereby authorized to levy for county purposes for the years 1848 and 1849, a tax not exceeding either year, the State tax of that year, to be levied of the same description of property, and collected as the State tax.

SEC. 2. *Be it further enacted*, That the said Court shall have power to increase the levy for this year, in accordance with the first section of this act, and that this act take effect from and after its passage,

Approved, March 2, 1848.

## CHAPTER 62.

An Act authorising persons who have received donation certificates under provisions of "an act granting lands to those who were in the battle of San Jacinto and other battles," approved December 21, 1837, to alienate said certificates, and the lands acquired under them.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That any person holding a donation certificate obtained under the provisions of "an act granting lands to those who were in the battle of San Jacinto and other battles," approved December 21, 1837," or holding lands acquired under any such certificate, shall hereafter be permitted to sell and alienate the same, and whenever any such donation certificates or lands acquired under them shall have been sold or alienated under the provisions of this act, all conditions and privileges attached to such certificates or lands shall cease and determine: *Provided,* that the provisions of this act shall not extend to Jesse Walling, John C. Walling, Robert W. Smith and Jacob Lewis. Approved, March 2, 1848.

## CHAPTER 63.

An Act to authorize a special tax to be collected, in the County of Guadalupe.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the County Court of Guadalupe county be, and they are hereby authorized to levy and have collected upon all taxable property subject to taxation and upon all persons liable to pay license or direct taxes within said county, a special tax not to exceed one half of the county tax for the current year, which tax shall be levied and collected, as other county taxes are levied and collected, and shall be applied exclusively to the erection of a Jail at the county seat.

SEC. 2. *Be it further enacted,* That the County Court of said county may hold a special session on the last Monday in

March, 1848, for the purpose of acting on the subject, and that this act shall take effect and be in force from and after its passage.

Approved, March 6, 1848.

## CHAPTER 64.

An Act better to define the boundaries of Walker County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That from and after the passage of this act, the boundaries of Walker County shall be known as follows; beginning in the middle of the Trinity river at Robbins' Ferry; thence with the San Antonio road to the North West corner of a survey of 640 acres of land made for L. G. Clipper; thence by a straight line to the North West corner of a survey of two-thirds of a league, made for James H. Collard; thence by a stright line to a point on San Jacinto, three miles below the mouth of East Sandy Creek, to be run straight with the general course of the San Jacinto; thence due East to the West boundary line of Polk county; thence Northerly with the West boundary line of Polk county to its North West corner; thence with the North boundary line of Polk county to the middle of the Trinity river; thence up the middle of said stream to the beginning.

SEC. 2. *Be it further enacted,* That all laws or parts of laws conflicting with this act, be, and the same are hereby repealed.

Approved, March 6, 1848.

## CHAPTER 65.

An Act to create the County of Caldwell.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the following described limits shall be known as

the County of Caldwell, viz: Beginning at the mouth of Plum Creek on the San Marcos River; thence North 45 deg. East to the South West boundary line of Bastrop county; thence North 45 deg. West, with said boundary line, to its intersection with the San Antonio road and Travis line; thence in a South West-erly direction with said road to the San Marcos river; thence with said river to the place of beginning.

SEC. 2. *Be it further enacted*, That the County Seat of Cald-well shall be located at a town laid off on a league of land granted to Bird Lockhart, near the springs on said league, and shall be called Lockhart.

SEC. 3. *Be it further enacted*, That this act take effect from and after its passage.

Approved, March 6, 1848.

## CHAPTER 66.

### An Act to locate the County Seat of Cass County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Chief Justice of Cass County shall order an election to be held in each of the beats of the Justices of the Peace by the qualified electors, for one locating Commissioner, to be chosen from and by each of the beats of said county on or before the first Monday in June ensuing, and cause the said election to be conducted according to law.

SEC. 2. *Be it further enacted*, That it shall be the duty of the Chief Justice, after having received full and due returns of said election, to notify the parties elected of their election, and shall, within twenty days thereafter qualify the parties so elected, faithfully to discharge the duties assigned them, under the provisions of this act, a majority of whom may act, and shall proceed without unreasonable delay, to ascertain, and correctly as may be to define the true geographical centre of said county, and shall have power to employ competent persons for the attainment of that object at the expense of the county, if they deem it necessary and proper.

SEC. 3. *Be it further enacted*, That when the centre of said County shall have been found, the Commissioners shall select one eligible point, within three miles thereof, having due re-



gard to donations and the other advantages of its location, and nominate the same for the County Seat of the county, to be voted for at an election to be held as hereinafter provided: and provided that said Commissioners shall nominate one place, situated any where in said county, besides the centre and the present seat of justice of said county for the same object, and have power to contract for such place or places selected for the use of the county, conditioned that such place is determined on for the seat of justice by the voters of the county. A majority of all the votes polled in such election shall be necessary to a choice, and successive elections shall be held until this result shall be attained.

SEC. 4. *Be it further enacted*, That said Commissioners shall make a full return of their proceedings within ninety days after their election to the Chief Justice, the names of the places, they may have selected, defining as near as may be, the local advantages or respective situations, and where located in the county, who shall file the same in the Clerk's office for record.

SEC. 5. *Be it further enacted*, That upon the reception of the report of the Commissioners, by the Chief Justice he shall order an election to be holden by the qualified electors of the county, giving due notice thereof, specifying the object of the election, the names of the places put in nomination and selected by the Commissioners to be voted for, for the seat of justice.

SEC. 6. *Be it further enacted*, That it shall be the duty of all county officers to remove their offices to such place as the seat of justice may be located, and all courts in and for said county shall be held at that place, excepting that of the magistrates in their respective beats, so soon as the necessary buildings have been constructed for that purpose by order of the County Court, which shall cause a town to be surveyed and laid off in convenient lots in such manner as they may deem best, with power to sell and convey the same in the name and for the use and benefit of the county, first applying the avails arising therefrom to the construction of the necessary public buildings for the use of the county, and the payment of the costs, if any, of such site to the county, and other costs attending the same, of survey, &c., as agreed upon by the Commissioners, who shall also be entitled to a reasonable compensation for their services, in the discretion of the court, in an equitable and just amount.

SEC. 7. *Be it further enacted*, That all elections held under

this act, shall be conducted by said Chief Justice, in manner and form as prescribed by law; and that all laws conflicting with the provisions of this act, be and the same are hereby repealed.

Approved, March 7, 1848.

## CHAPTER 67.

An Act to authorize and require the Secretary of State, to cause all of the unbound Enrolled Acts and Joint Resolutions of the late Republic of Texas, and of the first Legislature of the State of Texas, to be substantially bound for preservation in his office.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Secretary of State shall be, and he is hereby authorized and required to arrange according to date, all the unbound enrolled acts passed, and Joint Resolutions adopted, by the Congress of the late Republic of Texas, at the different regular and extra sessions thereof, and all the acts passed and Joint Resolutions adopted by the Legislature of the State of Texas, during its first session, and cause them to be substantially bound in volumes corresponding numerically with the sessions during which said acts and Joint Resolutions were respectively passed and adopted, and to preserve the same among the records in his office.

SEC. 2. *Be it further enacted,* That the sum of fifty dollars is hereby appropriated, to be drawn by the Secretary of State on the Comptroller of Public Accounts, provided that it shall not exceed seven dollars in amount for any one session.

Approved, March 7, 1848.

## CHAPTER 68.

An Act to amend an act creating the County of Polk, approved March 30, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Board of Commissioners constituted by the third section of said act shall within six months from and after the passage of this act report to the county court of said county, making in said report a statement of all the proceedings of said Board, and the moneys, notes and proceeds of the sales of the town lots lying in the town of Livingston belonging to said county, and it is hereby made the duty of the Chief Justice of said county, to notify in writing said Board to meet in the town of Livingston, at such time or times, as he the said Chief Justice may deem necessary, for the settlement of the business above mentioned within the specified time.

SEC. 2. *Be it further enacted*, That after the final settlement of said Board in such manner, and within such time as mentioned in the first section of this act, it shall be the duty of the county court, to transact the business of the county in relation to said moneys, notes, and proceeds of the sales of lots in the town of Livingston, by split, settlement, or otherwise; and also, to control, and direct the sales of the remaining unsold lots, in said town, and belonging to said county, as said court shall think best for the interest of the county.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Chief Justice of said county to pay over, for the use of the county, to the County Treasurer, the proceeds of the sales of said lots.

Approved, March 7, 1848.

## CHAPTER 69.

An Act providing for the sale of the property belonging to the State of Texas, formerly used by the late Government for Custom purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Comptroller of Public Accounts, be, and he

is hereby authorized and required to cause to be offered at auction to the highest bidder, the public buildings and block of ground, situated in the City of Galveston, formerly used and occupied by the late Republic of Texas for Custom purposes, and also the like premises situated in the towns of Matagorda, San Augustine, and at Sabine Pass, also, all other property belonging to the State, which may have been used by the late Government in the collection of Impost duties, after giving at least sixty days public notice of such sale, which sale shall be had at the several points where the property is situated.

SEC. 2. *Be it further enacted*, That the proceeds of the sale of the property authorized by this act, shall be paid in specie, in the following manner, to wit: one fourth part thereof to be paid down, and the other three-fourths, to be paid in, three equal instalments, of six, twelve, and eighteen months, the purchaser or purchasers executing his or their notes accordingly, payable to the Comptroller, and his successors in office.

SEC. 3. *Be it further enacted*, That if any person or persons shall fail to make payment of the several instalments, in conformity with this act, he or they shall forfeit all such sums, as they may have previously paid, and the ground and improvements situated thereon, shall by such default, revert to the State, and the Comptroller shall thereupon proceed to sell said property again as directed by this act.

SEC. 4. *Be it further enacted*, That the Commissioner of the General Land Office, shall issue patents in the name of the State to the purchaser or purchasers of the property authorized to be sold by this act, on their filing with him the Comptroller's certificate that the full amount for which the same may have been sold, has been duly paid.

SEC. 5. *Be it further enacted*, That the Comptroller be authorized to pay the expense of advertising and sale, out of the first money received from the sale of the aforesaid property.

SEC. 6. *Be it further enacted*, That this act shall take effect, from and after its passage.

Approved, March 7, 1848.

## CHAPTER 70.

An Act to amend the third section of "an act to provide for the disposition of the funds received from the United States," approved third January, 1848.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the above recited section be so amended as to read, that the nett proceeds of the sum of one thousand nine hundred and seventy-five dollars received from the General Government as an indemnity for the disarming of a portion of the command of Col. Snively, by order of Capt. Cook of the U. S. Army, in 1843, after deducting therefrom the expense of collection and transportation to the City of Austin, shall be divided equally among the one hundred and five men, composing the party disarmed, their assigns or legal representatives. Any person applying for the benefit of this act, shall prove by the affidavit in writing of at least one of the party disarmed, that he, or those in whose right he claims, was of the party disarmed.

SEC. 2. *Be it further enacted.* That this act shall take effect and be in force, from and after its passage.

Approved, March 8, 1848.

## CHAPTER 71.

An Act to regulate the Public Printing.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That there shall be elected by joint vote of the two Houses of the Legislature of the State, at each and every session thereof, some suitable person or persons to print the laws and journals of the respective sessions, for which such persons may be elected.

SEC. 2. That there shall be printed by the person or persons, so elected to do the Public Printing, two thousand five hundred copies of the laws, of a general nature, and five hundred copies of all acts for private relief, and all acts incorpo-

rating Towns, Cities, Institutions of learning, and private associations of every nature, and five hundred copies of the Journals of each House, and the same number of copies of the laws and journals of each session hereafter to be held, until otherwise provided by law: and it shall be the duty of the Secretary of the Senate, and of the Chief Clerk of the House of Representatives, to cause to be copied the Journals of their respective Houses and prepare them for the press; they shall correct the proof sheet, and superintend the printing and shall be allowed fifteen cents a hundred words for preparing the Journals and superintending the publication as herein provided.

SEC. 3. The laws and journals shall be printed on small pica type, the pages to be forty-four lines long, exclusive of the folio, and twenty-seven ems wide, without side notes.

SEC. 4. The person or persons may be elected, to print the laws and journals of the present or any future session of the Legislature, shall within three days after the election, enter into bond with two or more securities in the sum of five thousand dollars; payable to the Governor and his successors in office, conditioned that the party so elected, shall faithfully execute the duties of his office, in the time and manner prescribed by law, which bond shall be filed in the office of the Secretary of State.

SEC. 5. It shall be the duty of the person or persons elected to do the Public Printing to deliver the number of copies of the laws and journals herein or hereafter required to be printed, to the Secretary of State or to his order, the laws within thirty, and the journals within sixty days, from the day on which copies are delivered to him or them, in default of which, the Secretary of State shall forthwith place the bond of the party so failing in the hands of the District Attorney, of the District in which the principal or principals or any of the obligors live, whose duty it shall be to bring suit on the same.

SEC. 6. It shall be the duty of the Secretary of State to superintend the printing of the laws of each session of the Legislature; he shall number all the acts and joint resolutions, and keep a register thereof and cause them to be printed in the order in which they are approved, and shall prepare, and have printed a minute and comprehensive index to the same, and shall certify at the end thereof, that the laws and joint resolutions, as printed are true copies of the original acts and joint

resolutions filed in his office; and it shall be his duty also, to certify under his hand and seal the day on which the Legislature adjourned, which shall be printed with the laws of the session named in the said certificate.

SEC. 7. The election for Public Printer shall hereafter take place during the second week of each and every session of the Legislature; and every person who may wish to be elected to said office, shall on or before the said second week of the session place in possession of the Speaker of the House of Representatives, sealed proposals stating the price at which he is willing to print the laws and journals of the Legislature then in session, specifying clearly the price to be charged per page for the number of laws and journals herein required to be printed, for the cost of printing one hundred copies of one hundred pages each, and of a larger or smaller number of copies and pages; bids in every instance to include folding and stitching; which proposals shall be opened and read to the two Houses on the day of election of Public Printer.

SEC. 8. That five hundred copies of the journals of each House of the first Legislature, shall be printed, and the printing of the same, may be let out in a separate contract; and it shall be the duty of the Secretary of the Senate, and the Chief Clerk of the House of Representatives to prepare the copies for publication, and they shall be allowed the same compensation therefor, as is provided for in the second section of this act.

SEC. 9. Within six days after the passage of any law or joint resolution, it shall be the duty of the Secretary of State, to cause to be delivered to the Public Printer, correct copies of said laws and joint resolutions, in order that the printing may be executed with the least possible delay.

SEC. 10. There shall be printed with the laws of the present session of the Legislature, a correct copy of the joint resolution of the United States Congress for annexing Texas to the United States, approved by the President of the United States on the 1st day of March, 1845; a copy of the joint resolution of the Congress of Texas, giving the consent of the Government to the annexation of Texas to the United States; approved on the 3d June, 1845: a copy of the Ordinance of the Convention of the people of Texas assenting to, and accepting annexation, adopted in Convention on the 4th July, 1845; a copy of the Constitution of the State of Texas; a copy of the Ordinance of the Convention, in relation to colonization con-

tracts entered into by the Republic of Texas; and a copy of the Joint resolution of the United States Congress accepting and approving the Constitution of the State of Texas.

SEC. 11. "An act to provide for the publication of the Laws of the State," approved 13th May, 1846, and so much of the fourth section of "an act to define the duties of Secretary of State" as requires marginal notes to be affixed to the laws, are hereby repealed; and this act shall take effect from and after its passage.

Approved, March 8, 1848.

## CHAPTER 72.

### An Act concerning the forfeiture of certain neat Cattle.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That hereafter no neat cattle shall be brought within the limits of this State, for the purpose of grazing or herding the same, unless such cattle are owned by some person or persons, who are citizens of, or residents in the State, or who are the owners or cultivators of a plantation or farm within the State, and any such neat cattle, that may hereafter be brought into this State in violation of the provisions of this act, shall be forfeited to the county in which the same may be kept for the purpose of grazing or herding.

SEC. 2. *Be it further enacted,* That any neat cattle, that are now kept within the limits of this State for the purpose of grazing or herding, and that are not owned by any person or persons who are citizens of, or residents in this State, or who are the owners and cultivators of a plantation or farm within the State, shall be forfeited to the County, in which they may be so kept, unless the same shall be removed from the State or sold to some person or persons, who are citizens of, or residents in the State, or who are the owners and cultivators of a plantation or farm within the State, within the period of six months, from the passage and final approval of this act.

SEC. 3. *Be it further enacted,* That the District Attorney of each Judicial District shall upon being informed by affida-



vit or otherwise, of any violation of this act, proceed by information and other legal proceedings, to have the forfeiture of such neat cattle determined, and for which the District Attorney shall be entitled to one-fourth of the said forfeiture.

SEC. 4. *Be it further enacted*, That the State shall not be liable for any costs that may accrue in the above proceedings, and that this act take effect from and after the passage and final approval of the same.

Approved, March 9, 1848.

## CHAPTER 73.

An Act to locate permanently the County Seat of Justice for the County of De Witt.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the second Monday in July, A. D. 1848, be fixed as the day for the holding of an election in the county of De Witt, for the selection of a suitable place for the permanent location of the county seat of justice for said county; and it shall be the duty of the Chief Justice of De Witt county to give public notice of said election, and to issue orders for the holding of said election at the different precincts in said county at least ten days previous to said election.

SEC. 2. *Be it further enacted*, That it shall be the duty of said Chief Justice to receive and make public by advertisements in each precinct in the said county of De Witt, such propositions as may be offered by the citizens of the county, as inducements in favor of the election of places recommended as suitable locations for the county seat of said county.

SEC. 3. *Be it further enacted*, That all propositions submitted to the Chief Justice in compliance with the second section of this act, shall be in the shape of penal bonds, and shall be collectable in law at the suit of said Chief Justice, and his successors in office in the said county of De Witt, for the use of the county, in the District Court, and the proceeds applied to the erection of county buildings.

SEC. 4. *Be it further enacted*, That the said Chief Justice

is hereby authorized and empowered to receive any lands which may be donated to said county, not to exceed six hundred and forty acres in quantity, for the location of said county seat, which land shall be disposed of by the County Court for county purposes.

SEC. 5. *Be it further enacted*, That each bona fide settler who has resided within the limits of the said county of De Witt, one month next preceding said election, and has arrived at the age of twenty-one years, shall be deemed a qualified voter in the location of the county seat of said county,

SEC. 6. *Be it further enacted*, That the election of said county seat shall be conducted agreeably to the law regulating elections, and the returns made to the Chief Justice of said county, within ten days after the election, who shall publish the result and declare the place receiving the highest number of votes to be the legal seat of justice for the said County of De Witt: *Provided* any one place shall have received a majority of all the votes polled at said election; but in the event no one place shall have received a majority as aforesaid, then it shall be the duty of the said Chief Justice to order another election, after giving notice as in the first instance, putting in nomination the two places that have received the greatest number of votes, which election shall be conducted and the returns made as heretofore provided, and the place then receiving the highest number of votes, shall be declared the county seat of justice for the said county of De Witt.

SEC. 7. *Be it further enacted*, That James N. Smith, David Smith, James M. Baker, Robert Wafford, and Crockett Cardwell, of whom three may constitute a quorum to do business, shall be, and they are hereby appointed Commissioners to lay out a town in such form as to them may seem best, at the place selected as the county seat of said county, to superintend the carrying out such propositions as may have been made in behalf of the selected location, and report to the Chief Justice whether or not the bond containing propositions in favor of said selected place shall have been strictly complied with by the makers of the same.

SEC. 8. *Be it further enacted*, That as soon as suitable county buildings are received by the Commissioners and reported to the Chief Justice, the Clerks of the District and County Courts and Sheriff shall remove their offices and papers to the place re-

lected as the county seat, and all courts thereafter shall be held at the said county seat.

SEC. 9. *Be it further enacted*, That all laws and parts of laws conflicting with this act are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved, March 9, 1848.

## CHAPTER 74.

Joint Resolution for the relief of the Texas Volunteers, called into the service of the country in the year 1846.

Whereas, the volunteers of Texas who repaired to the service of the country, under the call of His Excellency the Governor of the State, in the Spring of 1846, in consequence of their unprepared condition for such an expedition, and the great distances they had to travel to reach the point of rendezvous, incurred great expense; many of them to such an extent that they are yet suffering in consequence, and may unless relieved by Government, never recover therefrom, Therefore,

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That our Senators in Congress be instructed and our Representatives requested to procure the passage of a law by the Congress of the United States, reimbursing the troops of Texas, who were called into the service of the country by his Excellency the Governor of the State, under the requisitions of General Taylor and Col. Harney, in the Spring of the year 1846, the expenses incurred by them in travelling to the place or places of rendezvous.

Approved, March 10, 1848.

## CHAPTER 75.

An Act regulating Attachments.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That whenever a writ shall issue from any of the Courts

of this State commanding the Sheriff or other officer to summon any person to answer to any civil suit in said Court, and the said officer shall return that the defendant is not to be found in his county, the plaintiff may sue out a writ of attachment, to be levied of the property of such defendant, returnable in the same manner as original writs: and if the said officer shall return any property by him attached, and the defendant shall fail to appear and plead within the time limited by the law regulating pleadings, the plaintiff shall be entitled to judgment as in ordinary suits; and the property so attached, if not replevied, or released by special bail, shall remain in the custody of the Sheriff or other officer until final judgment.

SEC. 2. *Be it further enacted*, That the bonds given upon which attachments are issued, shall not be construed as security for costs.

SEC. 3. *Be it further enacted*, That the Judges and Clerks of the District Courts and Justices of the Peace, may issue said judicial attachments returnable to their respective Courts.

SEC. 4. *Be it further enacted*, That the Judges and Clerks of the District Courts, and Justices of the Peace may issue original attachments, returnable to their respective Courts upon the party applying for the same, his agent or attorney making an affidavit in writing, stating that the defendant is justly indebted to plaintiff, and the amount of the demand; also, that the defendant is not a resident of this State, or that he is about to remove out of this State; or that he secretes himself so that the ordinary process of law cannot be served on him; or that he is about to remove his property beyond this State, and that thereby the plaintiff will probably lose the debt; and he shall also swear that the attachment is not sued out for the purpose of injuring the defendant.

SEC. 5. *Be it further enacted*, That the plaintiff, his agent or attorney, shall, at the time of making such affidavit, give bond, with two or more good and sufficient sureties, payable to the defendant in at least double the amount sworn to be due, conditioned, that plaintiff will prosecute his suit to effect and pay such damages as shall be adjudged against him for wrongfully suing out such attachment.

SEC. 6. *Be it further enacted*, That said bond may be put in suit in the same manner as other bonds.

SEC. 7. *Be it further enacted*, That upon such affidavit and bond being filed, it shall be the duty of said District Judge

Clerk, or Justice of the Peace, to issue an attachment against the property of the debtor, wherever the same may be found, or so much thereof as shall be sufficient to satisfy the demand and costs of plaintiff; which property shall remain in the hands of the officer attaching the same until final judgment, unless the same shall be replevied or released by special bail; and should the defendant fail to replevy the property so attached within fifteen days after the levying of the attachment, the plaintiff in the attachment shall have the right of replevying the same upon giving bond to the defendant in double the amount of the value of the property attached, with good and sufficient security conditioned for the forthcoming of the property to abide the result of the suit.

SEC. 8. *Be it further enacted,* That the same proceedings shall be had thereon as in judicial attachments.

SEC. 9. *Be it further enacted,* That every original attachment issued without affidavit and bond taken as aforesaid, shall be abated on motion of defendant.

SEC. 10. *Be it further enacted,* That the bond aforesaid shall not be void for want of form; *Provided,* it contains all essential matters.

SEC. 11. *Be it further enacted,* That attachments may be levied on defendant's property, and the manner of executing an attachment on personal property shall be, by the officer going to the house in which, or to the person in whose possession the property of the defendant is supposed to be, and then and there declaring in the presence of one or more credible persons of the neighborhood, that he attaches said property.

SEC. 12. *Be it further enacted,* That the defendant shall have the right to replevy the property so attached, by giving bond, payable to the plaintiff, with two or more sufficient sureties, for the amount of the debt and interest thereon, or at his election for the value of the property so attached, conditioned, that if the defendant be condemned in the action, he or some other person for him, shall return the specific property attached to satisfy the judgment that may be rendered; and, should the defendant fail to replevy the property attached, within the time prescribed in section seventh, then the plaintiff shall have the right to replevy the same, as prescribed in said section.—Any officer taking any such bond, shall endorse thereon the value of the property replevied, and unless the property so attached, shall be replevied, or unless claim be made to it, and

bond given to try the right of the same, as provided by law, or, unless the defendant give special bail as provided for by this act, such property shall remain in the custody of the officer attaching the same, to satisfy the judgment that may be rendered, and the said replevin bond, or bond for the trial of the right of property, or bond given as special bail, shall be lodged with the Clerk of the Court or Justice of the Peace, where the attachment is returnable; and, should the obligors, in any such replevin bond, neglect to deliver the property attached, or so much thereof as may be sufficient, to the proper officer of the Court, for the satisfaction of the final judgment that may be rendered in the attachment, within ten days after the final judgment shall be rendered, such bond shall forthwith be endorsed by said officer as forfeited; and if the judgment is against the defendant, the Clerk or Justice of the Peace, with whom the same is lodged, shall forthwith issue execution, in favor of the plaintiff, against all the obligors in such replevin bond for the full penalty thereof, unless such penalty shall be for a greater amount than the judgment, with interest and costs, against the defendant in attachment, in which case, such execution shall be issued against such obligors for the amount of such judgment, interest and costs; if the judgment shall be against the plaintiff in any case where he may have replevied the property, the Clerk or Justice of the Peace with whom such replevin bond is lodged, shall forthwith issue execution in favor of the defendant against all the obligors in such replevin bond; for the value of such property with legal interest, from the date of the bond. And should the obligors in any such bond, for the trial of the right of property, where the claimant fails to establish his right, neglect or deliver the property attached, or so much thereof, as may be sufficient, to the proper officer of the Court, to satisfy the final judgment that may be rendered against the defendant in attachment, within ten days after the failure of the claimant to establish his right thereto, then, the like proceedings shall be had against the obligors in such bond, for the trial of the right of property, as is herein provided for replevin bonds.

Sec. 13. *Be it further enacted,* That whenever an officer shall levy an attachment it shall be at his own risk, and such officer may for his own indemnification require the plaintiff in attachment to execute and deliver to him a bond of indemnity.

to secure him, if it should afterwards appear that the property, levied upon by him does not belong to the defendant.

SEC. 14. *Be it further enacted*, That any person against whose property an attachment has issued, his agent or attorney, may, at any time before final judgment, upon giving special bail, with good and sufficient sureties, for the amount of the debt and interest, recover possession of the property so attached from the person in whose hands it may be, but the giving such special bail shall be deemed an appearance of the defendant, and the suit shall thereupon proceed as in ordinary cases, but if the plaintiff recover, he shall have judgment against all the obligors in the bail bond.

SEC. 15. *Be it further enacted*, That special bail put in as above provided for shall release the property so attached.

SEC. 16. *Be it further enacted*, That a writ of attachment may issue in all cases against the property of a debtor legally subject to attachment, although the debt or demand of the plaintiff be not due, and the same proceedings shall be had thereon, as in other cases of attachments, except that no final judgment shall be rendered against the defendant, until the debt or demand of the plaintiff shall become due, but if the property so attached be of a wasting or perishable nature, then the same shall by order of the Judge, or Justice of the Peace, to whose Court the attachment is returnable, be sold, giving a credit on the sale until the debt or demand of the plaintiff shall become due, on the purchaser's giving bond, with two or more sufficient sureties, payable to the plaintiff, for the payment of the purchase money; which bond shall be lodged with the other papers in the cause, and if the money is not paid at the expiration of the time given, the Clerk or Justice of the Peace, with whom such bond is lodged, shall issue execution against the principal and sureties, or either of them, and the money when collected shall be paid into the hands of the Clerk or Justice of the Peace, to abide the final decision of the cause.

SEC. 17. *Be it further enacted*, That when any property attached on the oath of the plaintiff, his agent or attorney, be certified to any District Judge or Justice of the Peace to whose Court the attachment is returnable, to be likely to be wasted or destroyed by keeping, and if the person to whom it belongs, his agent or attorney, shall not within thirty days after the levy of the attachment, replevy or release the same by special bail, then such property shall, by order of such Judge or Justice of

the Peace, be sold at public sale by the officer who levied the writ, in the same manner as sales by execution, and the said officer shall, within five days after such sale, return the order of sale to the Court or Justice of the Peace to which the attachment is returnable, with his proceedings thereon, and also at the time of making such return, shall pay over into the hands of the Clerk or Justice of the peace, all moneys arising from such sale, which moneys shall be subject to the judgment of the suit.

SEC. 18. *Be it further enacted*, That no judgment shall be rendered in suits by attachment unless the citation or summons has been served in the ordinary mode, or by publication in the manner provided for by law.

SEC. 19. *Be it further enacted*, That when a Judicial or original attachment has been issued, the plaintiff may apply to the officer who issued the same for a writ of garnishment against any person supposed to be indebted to, or supposed to have any of the effects of the defendant, commanding the Sheriff or other officer to summon such person as garnishee to appear before the District Court, or Justice of the Peace where the attachment is returnable, on the first day of the first term of the Court, or on the return of the attachment; if returnable before a Justice of the Peace, then to answer upon oath what he is indebted to the defendant, or what effects of the defendant he has in his possession, and had at the time of serving of the garnishment, and what credits and effects there are of the defendant in the hands of any other person and what person, to the best of his knowledge or belief, and it shall be lawful at any time after his appearance and examination, when final judgment shall be rendered against the defendant in attachment, also, to enter up judgment against such garnishee for all sums of money acknowledged, or proved to be due, and for all effects acknowledged or proved to be in his possession, or so much thereof as may be sufficient to satisfy the judgment of the plaintiff and costs, and if such garnishee shall fail or refuse to deliver to the proper officer of the Court, all sums of money and effects, for which such judgment was entered against him, or so much thereof as may be sufficient to satisfy the judgment of the plaintiff, and costs, when demanded by such officer, he shall make return to the Court or Justice of the Peace, of such failure or refusal, whereupon, it shall be the duty of the Clerk or Justice of the Peace to issue execution against such garnishee, for the full amount of the



judgment and costs, that was rendered against the defendant.

SEC. 20. *Be it further enacted*, That when any garnishee shall be summoned in the manner aforesaid, and shall fail to appear and discover on oath as is directed by this act, it shall be lawful for the Court or Justice of the Peace, after calling the garnishee, to render judgment against him, and for such sum as judgment may be rendered against the defendant in attachment.

SEC. 21. *Be it further enacted*, That whenever judgment shall be rendered against any garnishee in the manner provided for by this act, he shall have the right at any time, within ten days after final judgment entered against him as garnishee to deliver the money and effects for which judgment was so entered, to the proper officer of the Court, in discharge of himself.

SEC. 22. *Be it further enacted*, That if, upon the examination of any garnishee it shall appear that there is any of defendants effects in the hands of any other person who has not been summoned, or that any other person is indebted to the defendant, the Court or Justice of the Peace shall, upon application, issue a judicial attachment or garnishment, to be served as in other cases of attachment and garnishment, and like proceedings shall be had thereon as in other cases of attachment and garnishment.

SEC. 23. *Be it further enacted*, That the defendant may in all cases, show by competent proof that the garnishee is indebted to him in a greater amount than he is willing to admit on oath.

SEC. 24. *Be it further enacted*, That the plaintiff wishing to controvert the garnishee's answer, may do so by making oath that he believes the same to be incorrect, whereupon an issue shall be formed and tried as in other suits.

SEC. 25. *Be it further enacted*, That every garnishee shall be allowed out of the effects and moneys attached; a reasonable compensation for his attendance, and in case no effects or moneys are attached in the hands of the garnishee, said compensation shall be taxed against the party causing such garnishee to be summoned.

SEC. 26. *Be it further enacted*, That the following form of bond and writ may be used. Know all men that——as principal, and —— as sureties, do hereby acknowledge ourselves bound to pay to —— the sum of —— dollars, and —— cents, conditioned that A. B. plaintiff in attachment against

C. D. defendant, will prosecute his suit with effect, and that he will pay such damages as shall be adjudged against him, for wrongfully suing out said attachment. Witness our hands and scrawls by way of seals, this——day of——A. D. 18——The State of Texas, County of——To the Sheriff of the County of——Greeting: We command you that you attach so much of the property of C. D., if to be found in your County, replevable on security, as shall be of value sufficient to make——dollars and——cents, and costs, to satisfy the demand of A. B., and such property so attached in your hands to keep and secure, that the same may be liable to further proceedings thereupon to be had at——, so as to compel the said C. D., to appear and plead to the complaint of the said A. B., when and where you shall make known how you have executed this writ.

SEC. 27. *Be it further enacted*, That all writs of attachment shall be signed and dated by the officer issuing the same, and when issued by a Judge or Clerk of the District Court, shall have the seal of the Court affixed.

SEC. 28. *Be it further enacted*, That no attachment shall be issued by any Judge or Clerk of the District Court, unless the plaintiff in the suit shall first file his petition in the same manner as in other suits.

SEC. 20. *Be it further enacted*, That "an act entitled an act regulating attachments" approved January 28th 1839, and an act to amend an act entitled "an act regulating attachments" approved January 28th, 1839, approved, February 4th, 1841, be, and the same are hereby repealed.

Approved, March 11th, 1848.

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## CHAPTER 76.

An Act to amend sections ten, eleven, thirteen, and twenty-two of "an act to organize the Supreme Court of the State of Texas," approved 12th May, A. D. 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the tenth section of an act entitled "an act to or-

ganize the Supreme Court of the State of Texas," approved 12th May, A. D. 1846, is hereby amended, so that the same shall hereafter read as follows, to wit:

That the Clerk of said Supreme Court shall carefully preserve the transcript of records certified to said Court and all papers relative thereto, and shall docket all causes brought to the court, putting all of the causes from each of the several judicial districts together upon the docket in the order in which he shall receive them, and the causes may be tried by districts, or in such other order as to the Judges of said Court may seem best calculated to promote the interest and convenience of the parties or their attorneys; and said Clerk shall faithfully record the decisions of said court and the proceedings thereof, and certify the same to the proper courts; and all causes shall be tried by said Supreme Court at the return term, unless satisfactory cause can be shown for a continuance.

SEC. 2. *Be it further enacted*, That the eleventh section of the above recited act is hereby amended, so that the same shall hereafter read as follows, to wit:

That on the rendition of any final judgment or decree by the Supreme Court, the Clerk of said court shall not be compelled to issue and deliver the mandate of the court, or certify the proceedings to the proper court, until all of the costs accruing on the cause in the Supreme Court shall have been paid. But in case said Clerk shall elect to issue and deliver the mandate of the court or certify the proceedings to the proper court, without such costs having been paid, then he shall make out a correct list of all the costs accruing on said cause in said Supreme Court, and shall issue execution therefor against the party or parties and his, her or their securities adjudged to pay the same directed to the Sheriff of the proper county, from which the original cause was removed, or to any county where the person or persons liable under such execution may have property; and it shall be the duty of every Sheriff, on the receipt of any such execution, to execute the same under the same rules, regulations and liabilities as provided for in cases of executions from the District Courts, which execution shall be returnable on or before the next regular term of the Supreme Court; and any Sheriff who shall fail to make due return of any execution herein provided for, or to pay over any costs so collected, when demanded, shall be subject to pay ten per cent. damages per month on the amount of such execution to the

Clerk of the Supreme Court, to be recovered on motion in the District Court of the County to which the execution was issued—such sheriff having had three days previous notice of such motion.

SEC. 3. *Be it further enacted*, That the thirteenth section of the above recited act is hereby amended, so that the same shall hereafter read as follows, to wit:

That whenever the Supreme Court, on the trial of a cause, brought from any District Court, shall affirm the judgment or decree of such District Court, or when said Court shall proceed to render such judgment or decree as should have been rendered by the court below, and such judgment shall be for the same or a greater amount, or of the same nature as rendered in the court below, said court shall render judgment against the appellant or appellants, and his, her, or their securities in the appeal bond—a copy of which shall always accompany the transcript of the record, and said Supreme Court shall, in their discretion, also include in their said judgment or decree, such damages, not exceeding ten per cent. on the amount of the original judgment, as the court may deem proper, and the judgment or decree of said court, rendered as contemplated in this section, shall be final, and shall not require any order, decree or action, on the part of the District Court from which the cause was removed; and the Clerks of the various District Courts, on the receipt of the mandate of the Supreme Court in any such cause, shall proceed to issue execution thereon as in other causes.

SEC. 4. *Be it further enacted*, That the twenty-second section of the above recited act is hereby amended, so that the same shall hereafter read as follows, to wit:

That when the copy of the record of any appeal or writ of error shall not be filed with the Clerk of the Supreme Court on or before the third day of the term next succeeding the taking of the appeal or writ of error, it shall be lawful for the Court in its discretion, or on motion of the defendant in appeal or writ of error, and no good cause shown why the transcript of the record was not filed in due time, to affirm the judgment against the appellant or plaintiff in error, as the case may be, and his, her, or their securities in the appeal bond; which shall be done without reference to the merits of the cause contained in the copy of the record; and in case the appellant or plaintiff in error in any cause shall fail to file a copy of the records

with the Clerk of the Supreme Court, as contemplated in this section, it shall be lawful for the defendant in appeal or writ of error at any time after the thirtieth day from the time of the commencement of the term of the Supreme Court, next succeeding the taking of the appeal or writ of error, to file a copy of such record in said Supreme Court; and it shall be the duty of said court, on motion of the defendant in appeal or writ of error, as the case may be, to affirm the judgment against the appellant or plaintiff in error, as the case may be, and his, her or their securities in the appeal bond.

SEC. 5. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, March 13, 1848.

## CHAPTER 77.

An Act to define the boundaries of the County of Austin.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the boundary line of Austin County, shall hereafter be as follows; beginning on Buffalo Bayou at the old crossing where the counties of Harris and Austin corner; thence in a direct line to the South East corner of Wm. Cooper's tract of land; thence along the said line until it intersects the line of William Wade's line; thence South along said line, to the South East corner of the said tract; thence along the said Wade's line, a due West course to the Brazos river.

SEC. 2. *Be it further enacted*, That all laws conflicting with the provisions of this act, be, and the same are hereby repealed, and this act take effect and be in force from and after its passage.

Approved, March 13, 1848.

## CHAPTER 78.

An Act to be entitled an act to create the County of Williamson, in honor of Robert M. Williamson.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That all that portion of Milam County included within the following limits, to wit: Beginning on the dividing waters, of Colorado and Brazos rivers, at the South East corner of a survey of nineteen and three-fourths labors, known as the Post Oak Island survey; thence North 71 deg. East, eight miles; thence North 19 deg. West, twenty miles; thence North 65 deg. West to the Salado; thence South 71 deg. West to the dividing ridge between the Brazos and Colorado waters; thence down said dividing ridge, with the meanders of the same to the beginning, be, and the same is hereby created a new county, to be known and called the county of Williamson, in honor of Robert M. Williamson.

SEC. 2. *Be it further enacted,* That John Berry, Senr., William C. Dalrymple, David C. Cowen, Washington Anderson, J. M. Harrell, and J. O. Rice, are hereby appointed Commissioners, who shall select from among their number a presiding officer, and shall proceed, (paying due regard to donations of land that may be offered,) to select two eligible sites, neither of which shall be more than five miles from the centre of said county; and shall submit the same to the legal voters residing within the aforementioned limits, at public election, to be held on the first Monday in May next; and the place receiving the greatest number of votes, shall be named by the Commissioners, and declared the County Seat of said county. If no donations of lands be offered, the Commissioners shall purchase on the best terms, for the interest of the county, a tract of land not to exceed three hundred and twenty acres, which they shall lay off into suitable lots, and shall proceed to sell all or a part of the same, as they may think best, on a credit of twelve months; reserving a sufficient amount thereof on which to erect the necessary public buildings. The proceeds arising from the sale of lots, shall be applied by the Commissioners to the erection of public buildings for the use of the county, reserving to themselves one dollar per day for each and every day they may be required to serve: the balance, if any, shall be turned

over by the Commissioners to the County Court, who shall afterwards superintend and control the same.

SEC. 3. *Be it further enacted*, That all civil suits which may have been instituted against any of the citizens of the county created by this act, in Milam county, shall be transferred, together with all papers thereunto belonging, to the proper officers of said new county, and be carried on in the same manner as if continued in the county in which they were originally instituted.

SEC. 4. *Be it further enacted*, That the person chosen by the Commissioners as their presiding officer, shall order an election to be held on the first Monday in May next, as named in the second section of this act, for the final location of the county site, giving at least ten days notice thereof in writing, to be posted up at four of the most public places in the county; which election shall be conducted according to law.

SEC. 5. *Be it further enacted*, That the county of Williamson shall belong to the second Judicial District of the State of Texas.

SEC. 6. *Be it further enacted*, That the Chief Justice of Milam county shall organize said new county in conformity to law; and that this act take effect from and after its passage.

Approved, March 13, 1848.

## CHAPTER 79.

### An Act better defining the marital rights of parties.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That every female under the age of twenty-one years, who shall marry in accordance with the laws of this State, shall, from and after the time of such marriage, be deemed to be of full age, and shall have all the rights and privileges to which she would have been entitled, had she been at the time of her marriage of full age.

SEC. 2. *Be it further enacted*, That all property, both real and personal, of the husband, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or de-

scient, as also the increase of all lands or slaves thus acquired, shall be his separate property. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands or slaves thus acquired, shall be the separate property of the wife: *Provided*, that during the marriage, the husband shall have the sole management of all such property.

SEC. 3. *Be it further enacted*, That all property acquired by either husband or wife, during the marriage, except that which is acquired in the manner specified in the second section of this act, shall be deemed the common property of the husband and wife, and during the coverture may be disposed of by the husband only; it shall be liable for the debts of the husband, and for the debts of the wife, contracted during the marriage, for necessities; and upon the dissolution of the marriage, by death, the remainder of such common property shall go to the survivor, if the deceased have no child or children; but if the deceased have a child or children, the survivor shall be entitled to one-half of said property, and the other half shall pass to the child or children of the deceased.

SEC. 4. *Be it further enacted*, That the husband and wife may be jointly sued for all debts contracted by the wife for necessities furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property.

SEC. 5. *Be it further enacted*, That upon the trial of any suit as provided for in the fourth section of this act, if it shall appear to the satisfaction of the court and jury, that the debts so contracted, or expenses so incurred, were for the purposes enumerated in said section; and also that the debts so contracted or expenses so incurred, were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife, at the discretion of the plaintiff.

SEC. 6. *Be it further enacted*, That the third and fourth sections of "an act to adopt the common law of England, to repeal certain Mexican laws, and to regulate the marital rights of parties," approved 20th January, 1840, be, and the same are hereby repealed; and that nothing contained in this act shall be so construed as to affect any other sections of said act than the said third and fourth sections; but that any other



section of said act that may control or affect the said third or fourth sections, shall have the like control and effect over the provisions of this act.

SEC. 7. *Be it further enacted*, That this act shall take effect and be in force from and after its passage.

Approved, March 13, 1848.

## CHAPTER 80.

### An Act to establish a State Penitentiary.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Governor be, and he is hereby authorized and required to appoint, by and with the advice and consent of the Senate, three competent persons as Commissioners, whose duty it shall be to select a proper site whereon to erect a State Penitentiary, to be convenient to navigable water, having due regard to health, materials for building, the importation of machinery, tools, materials to be wrought or manufactured, and for the transportation of articles made or manufactured by the convicts to a market for the same.

SEC. 2. That the Commissioners shall procure by purchase or otherwise, land, not exceeding one hundred acres, to include the site selected: *Provided* the land shall not cost the State more than five dollars per acre; and they are authorized to pay a fair value with the consent of the Governor, for any water power adjacent to and connected with the site of the Penitentiary.

SEC. 3. That the Commissioners shall report their proceedings to the Governor within sixty days after receiving notice of their appointment, together with the title deed for the land herein required to be procured, after having the same recorded in the Recorder's office in the county wherein the land lies, which deed shall be recorded and filed in the office of Secretary of State: The Commissioners so appointed shall receive as compensation for their services three dollars per day each, for the time they shall be actually employed in selecting a site and making their report, as herein required.

SEC. 4. That the Governor upon the receipt of the reports of the Commissioners, as above prescribed, shall appoint, with the advice and consent of the Senate, a suitable person as superintendent, whose duty it shall be, in connexion with the Directors herein provided for, to procure and submit a plan of the Penitentiary to the Governor; which plan, if approved of by him, shall be deposited in the office of the Secretary of State; and immediately thereafter, the Superintendant shall be required by the Governor to prepare for the erection of the Penitentiary upon the plan approved of, and upon the site selected; and the Directors shall be authorized to employ as many mechanics and laborers as they shall deem necessary, in connexion with the convicts delivered to the custody of the Superintendent, to put up so much of the building or buildings as will secure the prisoners and answer the immediate wants of the State; which building or buildings shall be so constructed and arranged as to form a part of the main buildings of the Penitentiary; and upon the erection of said building or buildings, the Superintendent under the direction of the Directors, shall discharge the hired mechanics and laborers, and the building of the Penitentiary shall be continued by the convicts until the same is completed. The Penitentiary shall be built of substantial materials, and shall be surrounded by a secure wall, to be placed at such a distance from the main building as to enclose a yard of sufficient dimensions to allow room for the erection of workshops and the employment of the convicts at such kind of labor as may be deemed most profitable and useful to the State, and will the least interfere with the general mechanical industry of the country; the Superintendent shall cause to be erected cells for the solitary confinement of the convicts at night, and at such other times as the Superintendent and directors shall direct; the Superintendent shall make an annual estimate at the commencement of each year, of all the materials necessary for carrying on the business in the various departments of the Penitentiary, and submit the same to the Directors; and he shall employ, under the direction of the Directors, a sufficient number of overseers and guards for the safe keeping of the convicts.

SEC. 5. That the Governor shall appoint, with the advice and consent of the Senate, three discreet persons as Directors, any two of whom shall constitute a Board to transact business. The Board of Directors shall make such rules and by-laws as

may be necessary for the government of the Penitentiary and punishment and control of refractory prisoners confined therein: *Provided* that no cruel or unusual punishment shall be inflicted. They shall cause the rules and by-laws to be printed and put up in some conspicuous place in the prison: they shall prescribe the uniform to be worn by the convicts, which shall be comfortable but of coarse material; and the provisions that shall be furnished them, which shall be in sufficient quantity, and of common but wholesome quality: They shall employ a suitable person to furnish the proper food and clothing for the convicts: they shall visit the Penitentiary at least once in each month; see that the convicts are humanely treated and sufficiently clothed and fed: they shall inquire into any cruel treatment or improper conduct alledged against the Superintendent, overseers, or guards; and if they discover any grievance, or cause of grievance, they shall see that the same is remedied; for which purpose they shall have power to discharge any overseer or guard from their employment about the Penitentiary; and in case of improper conduct in the Superintendent, they shall report the same to the Governor, for which purpose they shall have power to call before them witnesses, administer oaths, and take such other necessary steps as to arrive at the truth of the matter: they shall cause a distinction to be made in the treatment of the convicts, by extending to such as prove orderly, obedient and industrious, certain comforts and privileges according to their merit: *Provided* such privileges shall not conflict with the provisions of this act or endanger the custody of the convicts: they shall report annually to the Governor, or oftener if he require it, a comprehensive view of the government, discipline and transactions of the Penitentiary during the preceding year, which report shall particularly set forth the number of convicts in the Penitentiary, the age, sex, and place of nativity of each, their term of imprisonment, the offences for which they were committed, from what county they were sent, the number of convicts that have died, escaped, or have been discharged by expiration of their term, or pardoned, during the preceding year, the various branches of business in which they have been employed, and the number employed in each branch, with an account of articles manufactured and for sale; the articles that have been sold, and the amount of sales, the cost of materials, and the materials then on hand; which report, together with the report of the Superin-

tendent, shall, by the Governor, be laid before the Legislature, at each session thereof, within ten days after its organization. If the work to be done in the Penitentiary, or any part of the same, is of such a nature as to require previous instruction in its performance, proper persons for that purpose may be employed, to whom a suitable allowance shall be made by order of the Board of Directors. The Board of Directors shall also direct the manner in which materials to be used by the convicts shall be purchased; but it shall in no case be lawful for any director, superintendent, or overseer of the Penitentiary to purchase supplies of any kind themselves, or be interested therein; and said Board of Directors shall employ a physician for the Penitentiary, whenever it may appear to them to be necessary.

SEC. 6. That the Superintendent shall cause the clothes of each convict to be carefully preserved during the time they are confined therein, and returned to them on their discharge therefrom; and the Superintendent shall give to each convict, on his or her discharge from the Penitentiary, the sum of ten dollars: *Provided* the Superintendent shall be satisfied that said convict is without money and is otherwise unprovided for.

SEC. 7. That every convict, when received into the Penitentiary, shall be carefully searched and deprived of every article by which an escape might be effected. The description of every convict when received into the Penitentiary, shall be entered in a book to be kept for that purpose, in which shall be entered the name, sex, age, height, color of eyes and hair, place of nativity, previous occupation, time of conviction, nature of crime, and period of confinement. Said books shall be kept by the Superintendent, who shall also discharge the duty of Clerk of the Penitentiary. And in case of the escape of any convict, the Superintendent shall be authorized to offer a reward, not exceeding the sum of one hundred dollars, for the apprehension and return of such convict, and wherever any person may be entitled to such reward, the same shall be certified by the Superintendent and paid out of the appropriation for the Penitentiary, on the warrant of the Comptroller.

SEC. 8. That it shall be the duty of the Superintendent to take charge of all convicts who may be sentenced to the Penitentiary, and to keep them employed at all proper hours for labor; and until the Penitentiary shall be erected, and ready for the reception of convicts, it shall be the duty of the Superin-

tendent to employ all of the male convicts during working hours in chained gangs in getting out and preparing materials for the erection of the building.

SEC. 9. That all convicts sent to the Penitentiary, shall be conveyed thither by the Sheriff of the county where the conviction was had, or his legally authorized deputy, at the expense of the State; for which purpose, the Sheriff or Deputy shall be authorized (should he deem it necessary) to employ on his own account a guard of not exceeding two persons, except in extreme cases, and such extremity or necessity to be judged of and passed upon by the Superintendent, on the delivery of the convict or convicts into the Penitentiary. The Sheriff shall be entitled to two dollars and fifty cents for every thirty miles travel in going to the Penitentiary with a convict and returning from the same, the distance to be computed over the most direct and usually travelled route. In case one or more persons are employed as a guard, the Sheriff shall be entitled to the sum of two dollars for every thirty miles travel of each person of said guard, in going to and returning from the Penitentiary, the distance to be computed as aforesaid; and in addition, the Sheriff shall be entitled to receive for the conveyance and sustenance of each convict he may take to the Penitentiary, the sum of five cents per mile for each mile that such convict may travel in going to the Penitentiary, the distance to be computed as in the other cases herein provided for: and said several sums provided for in this section, shall be certified by the Superintendent, in the name of the Sheriff, or his deputy, as the case may be, and shall be paid out of the appropriation for the Penitentiary, on the warrant of the Comptroller.

SEC. 10. That it shall be the duty of the Clerk of the Court in which any person shall be convicted and sentenced to the Penitentiary, to furnish the Sheriff with a certified abstract of the record, setting forth the name, age, and previous occupation of the convict, and the term for which such convict was sentenced; which certificate shall be delivered to the Superintendent, who shall receipt to the Sheriff for the person of the convict; and the Sheriff shall deliver said receipt to the Clerk of the Court, who shall file the same with the verdict and sentence of the Court in the cause.

SEC. 11. That the Governor shall have and exercise the

removing and appointing power herein, when the Legislature is not in session, as in other cases.

SEC. 12. That the convicts of the different sexes shall at all times be kept separate and apart.

SEC. 13. That the Superintendent of the Penitentiary shall receive an annual salary of one thousand dollars; and rooms and offices shall be reserved for him and the other officers in appropriate places in the Penitentiary. Each of the Directors shall receive three dollars per day for each day they are actually employed: *Provided* the aggregate amount paid any one of said Directors for their said services, in any one year, shall not exceed the sum of one hundred dollars. The accounts of the Directors and inferior officers and employees of the Penitentiary, for their salaries or otherwise, shall be certified by the Superintendent, and paid quarterly upon the warrant of the Comptroller. And the accounts of the Superintendent for his salary, and expenditures on the account of the Penitentiary, shall be certified by the Directors and paid quarterly upon the warrant of the Comptroller, all of which shall be paid out of the appropriation for the Penitentiary.

SEC. 14. That an act entitled "an act to establish a State Penitentiary," approved May 11th, 1846, be, and the same is hereby repealed, and that this act take effect and be in force from and after its passage.

Approved, March 13, 1848.

## CHAPTER 81.

Joint Resolution proposing an amendment to the Constitution of the State of Texas.

SECTION 1. *Be it resolved by the Legislature of the State of Texas,* That the Constitution of the State of Texas be so altered and amended, that the Judges of the Supreme Court, Judges of the District Courts, Attorney General, District Attorneys, Comptroller of Public Accounts, Treasurer of the State, and the Commissioner of the General Land Office, shall at the expiration of their respective terms of office, or in case a vacancy

may occur in either of them, by death, resignation, or otherwise, after this amendment takes effect and thereafter, be elected by the qualified electors of the State in the manner prescribed by law.

SEC. 2. *Be it further resolved,* That the election for District Judges and District Attorneys shall be confined to their respective Districts.

SEC. 3. *Be it further resolved,* That the Governor cause this resolution to be duly published in the public prints of the State, at least three months before the next general election for Representatives of the State Legislature.

Approved, March 14, 1848.

## CHAPTER 82.

An Act to define the time of holding the District Courts in the tenth Judicial District.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the District Court shall be held in each county in the tenth Judicial District, as follows, to wit:

In the County of Victoria, on the first Mondays in March and September, and may continue in session three weeks.

In the County of Calhoun, on the third Mondays after the first Mondays in March and September and may continue in session one week.

In the County of Jackson, on the fourth Mondays after the first Mondays in March and September, and may continue in session one week.

In the County of Lavaca, on the fifth Mondays after the first Mondays in March and September, and may continue in session one week.

In the County of Gonzales, on the sixth Mondays after the first Mondays in March and September, and may continue in session two weeks.

In the County of DeWitt, on the eighth Mondays after the first Mondays in March and September, and may continue in session two weeks.

In the County of Goliad, on the tenth Mondays after the first Mondays in March and September, and may continue in session two weeks.

SEC. 2. *Be it further enacted*, That this act take effect and be in force from and after the first day of August next; and that from and after that time, all process in said counties shall be made returnable in conformity with the provisions of this act.

Approved, March 14, 1848.

## CHAPTER 83.

### An Act for the further organization of Henderson County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the following shall be the permanent boundaries of the county of Henderson, to wit: Beginning at a point on the Trinity river, eight miles on a due course, below where a line running due South from the North East corner of Dallas county, may strike said river; and running thence North forty-five degrees East to a point due East, to the South East corner of Dallas county, as established by Albert G. Walker; thence due East to a point forty-three miles East of said South East corner of Dallas county; thence due South to the North boundary line of Anderson county; thence Westwardly with the North boundary line of Anderson county to the Trinity river; thence up the Trinity river to the place of beginning.

SEC. 2. *Be it further enacted*, That David Baugh, Dr. H. M. Allen, Elbridge Mallard, Dr. Berias Graham, and John Baker, be, and they are hereby appointed Commissioners for said county, whose duty it shall be to ascertain the centre of said county, which they are hereby authorized to employ a competent surveyor to do, at the expense of the county, and nominate one place within five miles of the centre so ascertained, and the present county seat of said county, as places to be voted for as the permanent county seat of said county; and said Commissioners shall then order an election for said county seat, on the first day of April next, giving thirty days notice of said



election, by posting up written notices at not less than five public places in said county, which election shall be governed by the laws regulating elections generally; except that every *bona fide* citizen who shall have resided in said county three months next preceeding said election shall be entitled to vote therein. The votes polled in said election shall be returned to the Chief Justice of said county within ten days inclusive after the day of election, and said votes shall be opened and counted by said Chief Justice on said tenth, or return day, when the place receiving the highest number of votes shall be duly declared by said Chief Justice the county seat of Henderson County.

SEC. 3. *Be it further enacted*, That as soon as the county officers for said county shall be elected, at the regular election, in July next, and qualified, the archives of said county shall, if the county seat be removed from its present location to the new county site, and such county officers as are required to reside at the county seat, shall thereafter keep their offices at the new county seat.

SEC. 4. *Be it further enacted*, That said Commissioners shall have regard, in the selection of the place at the centre of the county, to eligibility of site, timber, and water; and said Commissioners are hereby authorized to receive donations for the different places put in nomination, either in land or money; which donation shall be secured by bond from the donor or donors, conditioned that the county seat be located at the place for which the donations are made.

SEC. 5. *Be it further enacted*, That said Commissioners are hereby authorized to apply any donations made under this act, to the erection of suitable county buildings.

SEC. 6. *Be it further enacted*, That after the organization of the County in July next, the Commissioners herein appointed shall surrender to the County Court of said county, all their books and papers, as Commissioners for said county, together with all the monies and liabilities in their possession; and thereafter, the County Court of said county shall do and perform all the duties imposed by this act on said Commissioners.

SEC. 7. *Be it further enacted*, That on the first meeting of said Commissioners, they shall select from their number a presiding Commissioner, who shall have power to convene said Commissioners whenever it may be necessary; and said Commissioners shall, at their first meeting, take an oath before

some competent authority, faithfully to discharge their duties as Commissioners for Henderson county; and said Commissioners shall be entitled to and receive one dollar per day for each day they may be employed in the discharge of their duties as such.

SEC. 8. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, March 14, 1848.

## CHAPTER 84.

### An Act regulating Sequestrations.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That Judges and Clerks of the District Court, and Justices of the Peace, shall at the commencement, or during the progress of any civil suit before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases, verified by the affidavit of the party applying for the writ: *First*, when a married woman sues for a divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, to remove the same out of the limits of this State, during the pendency of the suit: *Second*, when a person sues for the title or possession of a slave, or other moveable property, or chattles of any description, and makes oath that he fears the defendant or person in possession thereof will injure or ill-treat such slave, or waste such moveable property or chattles, or remove the same out of the limits of this State, during the pendency of the suit: *Third*, when a person sues for the foreclosure of a mortgage, or the enforcement of a lien upon a slave or moveable property of any description, and makes oath that he fears that the defendant, or person in possession thereof, will injure or ill-treat such slave, or waste such moveable property, or remove such slave or moveable property out of the limits of the county: *Fourth*, when any person sues for the title or possession of real property, and makes oath that he fears the defendant or

person in possession thereof, may make use of his possession to injure such property, or waste the fruits and revenue produced by the same, or convert them to his own use: *Fifth*, when any person sues for the title or possession of any property from which he has been ejected by force or violence, and shall make oath to such facts.

SEC. 2. *Be it further enacted*, That no writ of sequestration shall issue unless the party applying for the same shall make such affidavit of facts, and shall also file with the Clerk of the Court, or Justice of the Peace, a bond payable to the defendant for a sum of money equal to double the value of the property to be sequestered, with good and sufficient sureties, to be approved by such Clerk or Justice of the Peace, conditioned that the plaintiff or person suing out such writ, will pay to the defendant all such damages as may be awarded against him, in case it shall be decided that such sequestration was wrongfully issued.

SEC. 3. *Be it further enacted*, That such bond shall not be construed as security for costs: That the writ of sequestration shall command the Sheriff or other officer to take into his possession the property described by the affidavit if to be found in the county, and keep the same subject to the future order of the Court or Justice of the Peace, unless the defendant or person from whose possession such property is taken shall replevy the same according to law.

SEC. 4. *Be it further enacted*, That when any person has a mortgage or lien upon a slave or moveable property, of any description, and makes affidavit, that he fears the defendant or person in possession thereof will injure or ill-treat such slave, or waste such moveable property, or remove such slave or moveable property out of the limits of the county, a writ of sequestration may issue, although the right of action on such mortgage or lien has not accrued, and the same proceedings shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant, until the right of action on such mortgage or lien shall have accrued; but if the property so sequestered be of a wasting or perishable nature, the same shall, by order of the Judge or Justice of the Peace to whose court the sequestration is returnable, be sold, giving a credit on the sale until such right of action shall accrue, on the purchaser's giving bond, with two or more sufficient sureties, payable to the plaintiff for the pay-

ment of the purchase money, which bond shall be lodged with the other papers in the cause; and if the money is not paid at the expiration of the time given, the Clerk or Justice of the Peace, with whom such bond is lodged, shall issue execution against the principal and sureties, or either of them, and the money when collected, shall be paid into the hands of the Clerk or Justice of the Peace to abide the final decision of the cause.

SEC. 5. *Be it further enacted*, That when any property sequestered, on the oath of the plaintiff, his agent or attorney, be certified to any Judge or Justice of the Peace, to whose Court the sequestration is returnable, to be likely to be wasted or destroyed by keeping; and the defendant in such sequestration, his agent or attorney, shall not within thirty days after the levy, replevy the property sequestered, then such property shall by order of such Judge or Justice of the Peace, be sold at public sale, by the officer who levied the writ, in the same manner as sales by execution; and the said officers shall within five days after such sale, return the order of sale to the Court or Justice of the Peace, to which the sequestration is returnable, with his proceedings thereon; and also, at the time of making such return, shall pay over into the hands of the Clerk or Justice of the Peace all monies arising from such sale.

SEC. 6. *Be it further enacted*, That the defendant whose property has been taken by writ of sequestration, shall have the right to retain the same, by delivering to the Sheriff or other officer executing said writ, his bond payable to the plaintiff, with good and sufficient sureties, to be approved of by the Sheriff or officer taking the same, for an amount of money equal to double the value of the property sequestered; which bond, if the property sequestered be slaves or moveable property, shall be conditioned that he will not send away the same out of the county or limits of the State, according to plaintiff's affidavit; that he will not make an improper use of them, and that he will have them forthcoming to abide the decision of the Court, or that he will pay the value thereof, in case the suit shall be decided against him. If the property sequestered be real property, the condition of said bond shall be that he will not injure said property, and that he will restore the fruits and revenue produced by the same or pay their value, in case he shall be condemned so to do: such bond shall be returned to the Court with the suit, and in case the suit is decided against

the defendant, final judgment shall be entered against all the obligors in such bond jointly and severally.

SEC. 7. *Be it further enacted*, That the Sheriff or other officer, while he retains custody of the sequestered property, shall take care of and manage the same in a prudent manner; he may confide the same to the custody of other persons, but he shall be responsible for their acts, and he shall be responsible to the party injured, for any neglect or mismanagement by himself or by those whom he has confided the custody or management of such property; and he shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the Court or Justice of the Peace, and paid out of the proceeds of the property sequestered, if judgment be given in favor of the party suing out the said writ; but if judgment be against such party, then such compensation and reasonable charges shall be paid by him: *provided*, that if the defendant does not replevy the property sequestered within thirty days, the Sheriff or other officer shall deliver the property to the plaintiff, upon his giving bond payable to the Sheriff or other officer in a sum at least double the value of the property sequestered, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be forthcoming to abide the decision of the Court; which bond, if forfeited, or if the suit be decided against the plaintiff, shall have the force and effect of a judgment; and if the property sequestered be slaves, and the defendant does not within the time prescribed, (thirty days,) replevy the same, and the plaintiff within ten days thereafter, it shall be the duty of the Sheriff or other officer to hire out said slaves to the best advantage.

SEC. 8. *Be it further enacted*, that no writ of sequestration shall be issued by any Judge or Clerk of the District Court, unless a petition shall have been first filed in the office of such Clerk.

SEC. 9. *Be it further enacted*, That no judgment shall be rendered in any suit in which a sequestration has issued, unless the citation has been served in the ordinary mode, or by publication as provided for by law.

SEC. 10. *Be it further enacted*, That sections one hundred and forty-four, one hundred and forty-five, one hundred and forty-six, one hundred and forty-seven, and one hundred and forty-eight, of "an act to regulate proceedings in the District Courts," approved 13th May, A. D. 1846, be, and the same are

hereby repealed; and that this act take effect from and after its passage.

Approved, March 15, 1848.

## CHAPTER 85.

An Act to amend an act supplementary to an act to create and organize the county of Panola.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the third section of an act to create and organize the county of Panola be so amended as to read as follows, to wit: That it shall be the duty of the County Court of the county of Panola, to cause the territory of the same to be laid off into five Districts, as nearly equal in size as they can be made, by imaginary lines, the centre of the county to be the centre of one district; after which, the Chief Justice of said county shall cause an election to be held in each district, within fifteen days after said districts are made, for the election of one Commissioner for each district: said election, the notice of the same, and manner of making returns, shall be governed by the laws regulating elections for county officers; and on comparing the votes, the one receiving the highest number of votes in their respective districts, shall be declared the Commissioner for the county of Panola; whose duty it shall be to select two eligible sites, one of which shall be within five miles of the centre of said county, and the other on either side of the Sabine river, without regard to the centre, for the county site of said county; which places shall be submitted to the legal voters of said county, at public election, at such places as is prescribed by law: and it shall be the duty of the Chief Justice of said county, as soon as the said Commissioners shall have selected the sites and report the same, to issue a writ of election to be held, and the returns of said election to be made within ten days thereafter; and the place receiving a majority of the legal votes cast at said election shall be the county site, and shall be known and called by the name of Carthage; unless at said election some town or village now established in said coun-

ty be selected as the county site; and said Commissioners shall have power to purchase land in amount not to exceed one hundred and sixty acres for the use of said county, or to receive any amount offered as a donation.

SEC. 2. *Be it further enacted*, That the Commissioners or a majority of them, shall select and nominate the places to be submitted to the voters of Panola county for the county seat by the second Monday of July next; and on the second Monday of August thereafter, an election for county seat shall be held throughout said county; said election to be ordered as required by this act; and to be governed by the general law regulating elections.

SEC. 3. *Be it further enacted*, That the Commissioners, or a majority of them, shall make known the result of said election, by publishing the number of votes given for each place, and they shall immediately thereafter proceed to lay off the place selected for the county seat into convenient lots, reserving one in the centre thereof of such size as they may deem proper, upon which to erect a Court House, and one in some other part thereof, upon which to erect a county jail; and shall at such time or times as may be agreed upon amongst themselves, offer said lots for sale upon a credit of twelve months, taking notes with good security, and mortgages upon the property sold, payable to the Judge of the County Court of their county, and their successors in office for the use of the county, to be applied to the erection of county buildings first, and then to such other purposes as the county Court of said County may direct: *Provided* the said Commissioners give at least thirty days notice of each and every sale.

SEC. 4. *Be it further enacted*, That the Commissioners, for the services required of them by this act, shall receive such compensation as may be allowed by the county Court of said county for each and every day they may be in service; and that all laws be hereby repealed that conflict with this act.

SEC. 5. *Be it further enacted*, That this act take effect from and after its passage.

Approved, March 15, 1848.

## CHAPTER 86.

An Act to regulate the time of holding Courts in the fourth Judicial Districts.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Courts in the fourth Judicial District shall be held as follows, to wit: In the County of Bexar on the first Mondays in August and February, and may continue in session four weeks.

In the county of Medina, on the fourth Monday after the first Mondays in August and February, and may continue in session one week.

In the county of Refugio, on the fifth Monday after the first Mondays in August and February, and may continue in session one week.

In the County of Nueces, on the sixth Monday after the first Mondays in August and February, and may continue in session one week.

In the county of San Patricio, on the seventh Monday after the first Mondays in August and February, and may continue in session two weeks.

In the county of Cameron, on the ninth Monday after the first Mondays in August and February, and may continue in session two weeks.

In the county of Starr on the eleventh Monday after the first Mondays in August and February, and may continue in session two weeks.

In the county of Webb on the thirteenth Monday after the first Mondays in August and February, and may continue in session until the business is disposed of.

SEC. 2. *Be it further enacted*, That this act shall go into effect from and after the first day of August, A. D. 1848.

Approved, March 15th, 1848.



## CHAPTER 87.

An Act to create and organize the County of Santa Fe.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That all that territory included in the following boundaries, to wit; Beginning at the junction of the Rio Puerco with the Rio Grande, and running up the principal stream of the said Rio Grande to its source, and thence due North, to the forty second degree of North latitude; thence along the boundary line as defined in the treaty between the United States and Spain, to the point where the hundredth degree of longitude west of Greenwich intersects Red River; thence up the principal stream of said Red River to its source; thence in a direct line to the source of the principal stream of the Rio Puerco, and down the said Rio Puerco to the place of beginning, is hereby created into a new county to be called the county of Santa Fe.

SEC. 2. *Be it further enacted,* That the town of Santa Fe, shall be the County Seat of the County of Santa Fe.

SEC. 3. *Be it further enacted,* That the citizens of the county of Santa Fe, are hereby entitled to the same officers and Courts, to which the other counties of this State are entitled; *Provided,* that nothing in this act shall be so construed, as to give said county of Santa Fe, a separate Land District, or to authorize the county Court of said county to issue land certificates.

SEC. 4. *Be it further enacted,* That the District Judge of the eleventh Judicial District of the State of Texas, shall designate the places at which elections shall be held for county officers, on the first Monday in August next, or at such other time as he may think proper, and shall give thirty days notice of the same, and appoint the presiding officers to hold the elections and make returns to him, and he shall examine the returns and declare those receiving the highest number of votes, for the respective offices duly elected, and make return thereof to the Secretary of State.

SEC. 5. *Be it further enacted,* That this act take effect from its passage.

Approved, March 15, 1848.

## CHAPTER 88.

An Act to establish the eleventh Judicial District of the State of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the county of Santa Fe, shall constitute the eleventh Judicial District of the State of Texas.

SEC. 2. *Be it further enacted,* That the District Court shall hold its sessions, at the town of Santa Fe, in the county of Santa Fe, on the first Mondays in May and November of each year, and may sit until the business is disposed of.

SEC. 3. *Be it further enacted,* That this act take effect from its passage.

Approved, March 15, 1848.

## CHAPTER 89.

An Act to continue in force an act for the relief of those who have purchased lots in the City of Austin and tract adjoining.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That an act for the relief of those persons who have purchased lots in the City of Austin, and out lots upon the tract adjoining, passed the 4th day of May 1846, be and the same is hereby continued in force, until the first day of July next, and all lots that are not paid for in the manner provided in the above recited act, on or before the said first day of July next, shall be forfeited to the State; and it shall be the duty of the Comptroller of Public Accounts, forthwith to advertise by publication, in some newspaper, printed in the City of Austin, all such forfeited and relinquished lots, and after sixty days notice of the time and place of sale, shall, at the Treasury Department in the City of Austin, proceed to sell to the highest bidder for cash, all such forfeited and relinquished lots and pay the proceeds thereof into the State Treasury.

Approved, March 15, 1848.

## CHAPTER 90.

An Act to amend an act entitled "an act for the relief of Master Builders and Mechanics of Texas," approved January 23rd, 1839.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the second section of the above recited act be so amended as to read as follows, to wit: That every contract made and entered into as aforesaid shall be recorded in the County Clerk's office of the county where such building shall have been erected, within thirty days after the contract is made, or otherwise said lien shall be inoperative as to all persons without notice of its existence.

Approved, March 15, 1848.

## CHAPTER 91.

An Act to amend the forty third section of an act punishing crimes and misdemeanors, approved December 21st, 1836.

SECTION. 1. *Be it enacted by the Legislature of the State of Texas,* That the forty third section of the above entitled act be, and the same is hereby amended, so as to read as follows, to wit: Every person indicted for a capital offence, shall have a copy of the indictment delivered to him at least one day before his trial shall have commenced; and the Court shall at any time during the term, upon application of the District Attorney, order a *venue facias* returnable forthwith; by virtue of which the Sheriff shall summon thirty six persons to serve as Jurors in any such capital case; a list of whom shall also be furnished to the defendant, at least one day before the trial is commenced, and every person who shall be accused or indicted, shall be allowed to make his full defence in person or by counsel; and the Court, before whom such person is to be tried, shall, at his request, assign counsel, not exceeding two, who shall have free access to the accused at all proper times; and every person so indicted shall have like process to compel the atten-

dance of witnesses, as is granted to compel the attendance of witnesses on the part of the State.

SEC. 2. *Be it further enacted*, This act shall take effect from and after its passage.

Approved, March 15, 1848.

## CHAPTER 92.

An Act authorizing and requiring the County Courts to regulate roads, appoint overseers, &c.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the County Courts of the several counties of this State shall have full power to order the laying out of public roads when necessary and to discontinue or alter any road whenever it shall be deemed expedient, and it shall be their further duty to classify all roads running through their several counties, those of the first class shall be clear of all trees at least thirty feet wide, stumps cut down to six inches of the surface, all causeways laid out at least fifteen feet wide; and those of the second class shall not be less than twenty feet wide, clear of all trees, all stumps cut to six inches of the surface, and all causeways laid out at least twelve feet wide.

SEC. 2. That whenever it shall be deemed necessary to lay out any new road, the County Court shall appoint five reviewers, householders of the county, a majority of whom may, and can act, who shall proceed to re-view and mark out said road to the greatest advantage of the inhabitants and as little as may be to the prejudice of enclosures, and report to the Court at its next session, and on the report of the reviewers, the Court shall order the overseer to have said road cut out and made passable as provided for in the first section of this act.

SEC. 3. That the County Courts of the counties shall lay off their counties into road precincts, and shall at their first meeting in each and every year appoint one overseer for each precinct, and shall at the same time apportion and designate all the hands liable to work on public roads, and under the different overseers in their county, but if from any cause the Court

should fail or neglect to perform the duties required in this section at its first meeting in the year, it shall be competent and legal for it to make such apportionment and designation at a called meeting, or its next regular session.

SEC. 4. That it shall be the duty of the Clerk of the county Court to make out within ten days after the adjournment of the Court, the names of the overseers, and all the hands liable to work under them, and accompanying said list, a copy of the boundaries of the precinct as laid off by the Court, and deliver it to the Sheriff of his county, and the Sheriff shall within twenty days after the reception of the same deliver to, or leave at the common residence of the overseer a copy of the same, and on the Clerk or Sheriff failing to perform the duties herein required, each shall forfeit and pay for every such failure, the sum of twenty five dollars, which fines shall be recovered by judgment, on motion of the District Attorney of the District Court of the county in which the defaulter may reside, the said defaulter having three days notice of the said motion.

SEC. 5. That if any overseer shall fail or refuse to serve after receiving due notice of his appointment, he shall for such refusal be fined twenty dollars, to be recovered as provided for in the fourth section of this act; *Provided* that all reasonable excuses shall be heard and allowed; and no overseer of roads shall be required to perform militia duty or serve on juries during the time he serves as such.

SEC. 6. That the overseers of the road shall have power to call out all persons liable to work on public roads at any time when it may appear necessary to work or repair his road or any part thereof in his precinct: *Provided* that no one person shall be compelled to work on more roads than one, nor more than ten days in one year: and further, *provided* that each overseer shall with his hands work the road in his precinct clear through at least twice in every year during the months of May and September.

SEC. 7. That it shall be the duty of the overseer of any road to give two days previous notice by summons in person or in writing, left at their respective places of abode, to all free male persons, as well as to the owners, overseers, or employers of slaves liable to work on roads in his precinct, to meet at such time and place as he shall designate, and bring with them such tools to work with on the roads as he shall direct; and if any free person so summoned shall fail to attend or send

a substitute to work in his place, or when attending shall fail or refuse to do and perform his duty therein, shall forfeit and pay for each and every day, and for each and every such failure or refusal, the sum of one dollar and twenty five cents, together with all costs of suit, by judgment in the same manner as in cases of debt, before any Justice of the Peace of his county, and if a slave, the sum of one dollar for each and every day he shall fail to attend, to be recovered in manner as aforesaid from his owner, overseer, or employer; *provided* all reasonable excuses shall be heard and allowed.

SEC. 8. That if any overseer of a road shall fail or neglect to prosecute any free person, or if a slave, his owner, overseer or employer, who shall fail to attend, or neglect or refuse to perform his duty when lawfully summoned to work on roads, said overseer shall forfeit and pay for every such neglect, failure or refusal, the sum of five dollars, to be recovered as provided for in the seventh section of this act, and the funds accruing under this act to be used and applied as hereinafter directed.

SEC. 9. That if any person or persons whatever shall alter or change any public road, unless it be done by permission of the County Court, shall, on conviction thereof, forfeit and pay the sum of five dollars for each week the road is turned out of its old course; and if any person or persons shall erect, or cause to be erected across any public road, any bar, fence, or fall any tree, or brush, or any impediment of any kind whatever, and shall not remove such impediment within twenty four hours, he or they shall forfeit and pay the sum of three dollars for every day the impediment shall remain in said road, to be recovered in the manner prescribed in the fourth section of this act.

SEC. 10. That when to the overseer of the roads it may appear expedient to make causeways, the earth necessary to cover the said causeways shall be taken from both sides, so as to make a drain on each side of the causeway; and he shall erect bridges across all such water courses and other places as may appear to him necessary and expedient.

SEC. 11. That if any overseer of a road shall fail or neglect to keep the road, bridges, or causeways within his precinct clear and in good order, or suffer them to remain uncleared or out of repair for twenty days at any one time, unless hindered by high water, or other sufficient cause, to be adjudged

by the Court having jurisdiction of the same, such overseer shall forfeit and pay for every such offence the sum of twenty five dollars, to be recovered in the manner prescribed in the fourth section of this act.

SEC. 12. That all fines recovered under the provisions of this act, after deducting therefrom all legal costs, the balance shall be paid over to the overseer of the road in the precinct where the penalty accrued; for which amount the overseer shall give his receipt—the money to be applied by him to the improvement and keeping in good repair of his road.

SEC. 13. That every free person liable to work on roads, and if a slave, his master, overseer or employer, may, by calling on the overseer at any time before the day appointed to work on roads, and paying to said overseer the amount of which he or they might be liable for failing or refusing to work on said road, taking said overseer's receipt for the same, shall be exempt from working for every such day so paid for, and also exempt from any penalty for the same.

SEC. 14. That the overseers of roads shall apply all moneys coming into their hands to the improvement of their road in an impartial manner, by hiring hands and applying the work equally throughout his precinct; and should said overseer misapply, or fail or refuse to apply the money coming to his hands in manner as provided for in this section of this act, he shall, for such refusal, or failure, be liable for double the amount so misapplied, to be recovered on motion, as provided for in the fourth section in this act, and he shall be precluded from holding any office in any county in this State until such moneys are fully accounted for: *Provided* that all reasonable excuses shall be heard and allowed.

SEC. 15. That all male citizens, Indians excepted, between the ages of seventeen and forty five years, and all male slaves over fifteen and under fifty years, shall be liable to work on public roads: *Provided* that all regularly ordained Ministers of the Gospel, postmasters, public ferrymen, and millers, shall be exempt from working on public roads.

SEC. 16. That it shall be the duty of all overseers of roads, to cause sign boards to be put up at all forks and cross-roads, marked with the number of miles to the next public place; town, or village, pointing the proper direction to the place named on the board; and should there be a water course that requires a bridge, dividing any two road districts, the overseers

of each district shall meet at the same time and place with their hands, and the overseer chosen by the majority present shall superintend the building of such bridge until finished.

SEC. 17. That all laws and parts of laws contrary to, or in conflict with this act, be, and the same are hereby repealed; and that this act be in force and take effect from and after its passage.

Approved, March 15, 1848.

### CHAPTER 93.

#### An Act to regulate proceedings in case of forcible entry and detainer.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That if any person shall make an entry into any lands, tenements, or other real property, except in cases where entry is given by law, or shall make any such entry by force, or if any person shall wilfully and without force, hold over any lands, tenements, or other real property, after the determination of the time for which such lands, tenements, or other real property were let to him, or to the person under whom he claims, after demand made in writing for possession thereof, by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, (as the case may be,) within the intent and meaning of this act.

SEC. 2. Any Justice of the Peace, of any county in this State, shall have jurisdiction of any case arising under this act, and on complaint upon oath of the party aggrieved, or his authorised agent, shall issue his summons to the Sheriff, or any legally authorized officer of his county, commanding him to summon the person against whom such complaint is made, to appear before such Justice, at a time and place, named in such summons, not more than ten, nor less than six days, from the time of issuing such summons, which said summons, shall be served at least five days before the return day thereof, by reading the same to the defendant, or by



leaving a copy of the same with some free white person over the age of sixteen, at his usual place of abode, and the said Justice shall also, at the same time, issue a precept to the Sheriff or other officer as aforesaid, commanding him to summon a jury of six men, freeholders of the county, to appear before him on the day set for trying said complaint to hear and try the same; and if any part of the jurors so summoned, shall fail or refuse to attend or be challenged, then the said Justice may order the Sheriff, or other legal officer, to complete the number, by summoning and returning others forthwith.

SEC. 3. The Sheriff or other officer, shall return to the said Justice, the summon and precept as aforesaid, on the day assigned for trial, and shall state, on the back of said summons, how the same was served, and on the back of said precept the names of the jurors, and if the defendant does not appear, and answer, the justice shall proceed to try the said cause *ex parte*, or may, in his discretion postpone the trial to a time, not exceeding ten days; and the said justice shall issue subpoenas for witnesses, and shall proceed to try said cause, as in other cases of trial by jury before Justices of the Peace.

SEC. 4. The complaint shall describe particularly the lands, tenements, or other possessions in question; and the Justice of the Peace shall keep a record of the proceedings had before him: and if the jury shall find the defendant guilty, he shall give judgment thereon, for the plaintiff to have restitution of the premises and his costs, and shall award his writ of restitution; and if a verdict is given in favor of the defendant, judgment shall be given against the plaintiff for costs, and execution may issue therefor.

SEC. 5. If either party shall feel aggrieved, by the verdict of the jury, or the decision of the Justice, on any trial had under this act, he or she may have an appeal to the District Court, to be obtained in the same manner, and tried in the same way, as appeals from Justices of the Peace, in other cases.

SEC. 6. If the defendant or defendants appeal, he or they shall also insert in the appeal bond, a condition for the payment of all rents becoming due, if any, from the commencement of the suit, until the final determination thereof, if the appeal be taken within five days after the trial had before the Justice, no writ of restitution or execution shall be issued by him; and the District Court, on giving judgment for the plain-

tiff, shall award a writ of restitution and execution for costs, including the costs before the Justice, and if judgment be for the defendant, he shall recover costs in like manner, and have execution for the same.

Approved, March 15, 1848.

## CHAPTER 94.

An Act to provide for the election of electors of President and Vice President of the United States.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That on the Tuesday next after the first Monday in November, A. D. 1848, and on the first Tuesday next after the first Monday in November, every four years thereafter, the qualified electors for members of the House of Representatives of the State Legislature, shall elect from among the resident citizens of the State, over twenty-one years of age, and not members of either House of Congress, as many electors of President and Vice President of the United States, as the State of Texas may at the time be entitled to.

SEC. 2. *Be it further enacted,* That said contemplated election shall be held in the same manner, at the same places, under the same regulations, and by officers or managers appointed in the same way, as elections for members of the House of Representatives of this State may be; except that each qualified voter shall be authorized to vote for the whole number of electors that the State will then be empowered to elect.

SEC. 3. *Be it further enacted,* That the officers conducting said elections, or the managers thereof, at each precinct shall, under the penalty of one hundred dollars, recoverable in the name of the Governor for the use of the State, on motion made in the District Court by the District Attorney, after ten days previous notice given to the officer or officers failing to make return within three days after holding the same, correctly add up and compare the number of votes given for each person there voted for as an elector; and shall make out in writing,

seal up, certify, and transmit the result of said election to the Chief Justice or other proper officer of their county in the manner prescribed by the laws regulating elections for members of the State Legislature.

SEC. 4. *Be it further enacted*, That it shall be and is hereby made the duty of the Chief Justice or other proper officer of each county, within four days after the election, under the penalty of five hundred dollars recoverable in the name of the Governor for the use of the State on motion made in the District Court by the District Attorney, after ten days previous notice given to the officer failing to make return, to make out in writing, certify, seal up, and transmit by mail or other expeditious conveyance, a correct statement of the election held at all the precincts in his county, directed to the Secretary of State at the Seat of Government of the State, as is now required by law in other elections, and endorsed thereon: "*Election Returns for the county of——*," as the name may be.

SEC. 5. *Be it further enacted*, That it shall be the duty of the Secretary of State, in presence of the Governor, Lieutenant Governor, and Attorney General, or any, or either of them, on the fourth Monday in November next after said election, to open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of said electors, and cause the result thereof, with the names of the persons elected to be forthwith published in some newspaper printed at the seat of government for this State, and in writing notify the persons elected, respectively of their election; and in the event of a failure to perform the duties in this act prescribed, and in the manner specified, said Secretary of State shall forfeit and pay to the Governor for the use of the State, the sum of one thousand dollars, which may be recovered by the Attorney General, upon motion made in the District Court of the county in which the seat of government may be then located, after giving ten days notice thereof in writing to the Secretary of State.

SEC. 6. *Be it further enacted*, That the electors so chosen shall convene in the capitol, at the seat of government for the State, on the first Wednesday of December next after their election, and vote for President and Vice President of the United States, and make return thereof as is required by the laws of the United States.

SEC. 7. *Be it further enacted*, That if any person so chosen

elector, shall by death, or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day pointed out in this act, and vote as hereby required, a majority of the electors present, after having convened in accordance with the provisions of this act, may appoint some other person to act in the place of the absentee, and shall immediately report their action to the Secretary of State aforesaid.

SEC. 8. *Be it further enacted*, That the Governor shall, on or before the meeting of the electors, cause three lists of the names of such electors to be made out and delivered to them as required by act of Congress.

SEC. 9. *Be it further enacted*, That for the purpose of carrying this act into effect, it shall be the duty of the Governor, or in case of his inability, then of the Lieutenant Governor, periodically, as herein specified, to issue a proclamation under the seal of the State, and have the same published, for at least six weeks before the election in some newspaper printed at the seat of government, requiring the Chief Justice or other proper officer of each county in the State to cause an election to be held at each precinct in his county, at the time and for the purpose prescribed in and by this act.

SEC. 10. *Be it further enacted*, That this act shall have effect from and after its passage.

Approved, March 15, 1848.

## CHAPTER 95.

### An Act concerning proceedings in the District Courts.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the plaintiff in any civil suit, at any time before final judgment, upon motion of the defendant or of any officer of the court interested in the costs accruing in such suit, may be ruled to give security for the costs; and if such rule be entered against the plaintiff, and he fail to comply therewith, on or before the first day of the next term of the court, the suit shall be dismissed.

SEC. 2. That all bonds given as security for costs, shall

have the force and effect of judgments against all the obligors for the said costs.

SEC. 3. That if either party to any process or suit shall desire the testimony of the surety or sureties on his bond, given for costs or other purposes in the cause, he may give other good and sufficient security to be approved of by the court, but shall not thereby delay the progress of the cause: *Provided*, this section shall not apply to suits now pending.

SEC. 4. That executors and administrators of deceased person's estates, shall not be ruled to give security for costs in any suit to recover money due or property belonging to the estate. And no security shall be exacted of executors or administrators of deceased person's estates, in appeals taken in suing for such money or property, or in defending suits brought against such estates for money or property.

SEC. 5. That suits may be commenced in the District Courts, upon all appeal bonds, given in the County Courts, pertaining to the estates of decedents and wards, and upon all bonds given in the District Courts, to remove causes of the estates of decedents and wards, to the District Courts within four years next after the right of action shall have accrued on said bonds, and not afterwards, saving to persons *non compos mentis*, infants, and *femes covert* two years after their respective disabilities shall be removed.

SEC. 6. That the bonds of executors, administrators and guardians, and the bonds described in the section next preceding, may be put in suit, in the name, and at the cost of any person or persons injured by a breach thereof, until the whole penalty shall be recovered thereon, and without the assignment of said bonds being made by the Chief Justice of the County Court.

SEC. 7. That any person interested, desiring to have the proceedings of the County Courts pertaining to the estates of decedents and wards revised and corrected, may do so, by application to the Judge of the District Court, and the Judge of the District Court shall, upon such application being made, grant a writ of certiorari, to remove the proceedings to the District Court, there to be revised and corrected. And such certiorari shall not operate as a supersedeas, unless such applicant shall give a bond with good and sufficient sureties, payable to the Chief Justice of the County Court, in the same manner as in cases of appeal.

SEC. 8. That the Clerk of the County Court shall, upon being served with the certiorari, make out a certified transcript of the proceedings had at the time of the service of the writ, and transmit the same to the District Court to which the same is returnable.

SEC. 9. That writs of certiorari to remove the proceedings of the County Courts, pertaining to the estates of decedents and wards, may be sued out within two years after the proceedings were had, that are sought to be revised and corrected, and not afterwards, saving to persons *non compos mentis* infants, and *femes covert* two years after their respective disabilities shall be removed.

SEC. 10. That all civil writs and citations, (except subpoenas for witnesses and notices,) shall be returnable on the first day of the term of the Court after the issuance thereof; and in order to compel the defendant to plead at the return term of the Court, the writ of citation shall be served at least five days before the first day of said return term, exclusive of the days of service and return; and if the writ be issued too late, or cannot be served at least five days before the first day of said return term, exclusive of the days of service and return, the Sheriff or other officer to whom the same is directed, shall proceed, nevertheless, to serve the same, at any time before the return day thereof; which service shall compel the defendant to plead at the first term after the return thereof.

SEC. 11. That the return of the Sheriff or other officer, shall be made in writing on the back of the process or attached thereto, stating fully the time and manner of service, and shall be signed by him officially.

SEC. 12. That in all cases where process has been served, according to law, (except such causes as have been brought up from Justices of the Peace,) in which the defendant has not filed his plea on or before the fourth day of the term of the court, the plaintiff may, at any time, after said fourth day, have a final judgment against the defendant; and if the cause of action is liquidated and proved by any instrument in writing, the Clerk shall, unless a jury is asked for by either party, assess the damages of the plaintiff; but if the cause of action is unliquidated a jury shall be sworn to assess the damages of the plaintiff: *Provided* however, that in suits when service of the process has been made by publication, no such judgment by default shall be taken at the term of the Court to which

such process is returnable; but all such suits shall be continued until the next term of the Court, when final judgment by default may be taken as in other cases: and *provided* also, in all cases, that if the defendant in person, or by his agent or attorney, shall appear in the case, without service or process being made, or perfected, then such appearance shall have the same effect as if the service of such process was made or perfected.

SEC. 13. That if the plaintiff, his agent or attorney shall, at the time of instituting his suit, or at any time during the progress thereof, make affidavit before the Clerk of the Court, that the defendant is not a resident of this State, or that he is absent from this State, or that he is a transient person, or that his residence is unknown to the affiant, the Clerk of the Court shall issue a citation to the proper officer, (which citation shall contain a brief statement of the cause of action,) commanding the said officer to summon the defendant, by making publication of the citation in some newspaper published in the county where the writ issued, if there be a newspaper published in said county; but if not, then in the nearest county where a newspaper is published, for four weeks previous to the return day of such process.

SEC. 14. That if the plaintiff, his agent or attorney, shall, at the time of instituting his suit, or at any time during the progress thereof, make affidavit that the names of the heirs, successors, or legal representatives of any deceased person, party to such suit, are unknown to the affiant, the Clerk of the Court shall issue a like writ, directed to the proper officer, commanding him to summon such heirs, successors, or legal representatives, whose names are unknown, giving the names of the original deceased party, their ancestor, by making publication of the citation in some newspaper published in the county where the writ issued, if there be a newspaper published in said county; but if not, then in the nearest county where a newspaper is published, for eight weeks previous to the return day of such process: When such notice is given and no appearance is entered within the time allowed for pleading, the Court shall appoint an attorney to defend in behalf of such heirs, successors and legal representatives, and proceed as in other cases.

SEC. 15. That no application for continuance shall be heard before the defendant files his defence; nor shall any continuance be allowed unless by operation of law or by consent of

the parties, or for sufficient cause supported by affidavit: On the first application for continuance, if the cause of continuance be the want of testimony material to the case, the party applying for the same shall make affidavit that he has used due diligence to procure said testimony, stating such diligence: On the second application for continuance, if the cause of continuance be the want of testimony material to the case, the same shall be shown, and that the party applying has used due diligence to procure said testimony, and state such diligence; the cause of failure, if known; that the testimony cannot be obtained from any other source; and if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and that the continuance is not sought for delay, but that justice may be done.

SEC. 16. That such depositions may be returned to the Court, either by mail, by a party interested in taking the same, or other private conveyance: If sent by mail, the postmaster, or his deputy, mailing the same shall endorse thereon that he received them from the hands of the officer before whom they were taken; and the Clerk taking them from the post-office shall endorse on them that he received them from the post-office, and sign his name thereto: If sent by other conveyance, the person delivering them into Court shall make affidavit before the Clerk that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration.

SEC. 17. That depositions taken and returned in the manner provided for by this act, and an act entitled "an act to regulate proceedings in the District Courts," approved May 13th, 1846, may be read as evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might be made to the interrogatories and answers were the witness personally present before the Court, giving evidence: *Provided* that no deposition of a witness, except when the witness is a female, shall be permitted to be read in evidence unless the party offering the same, his agent, attorney, or some competent person shall first make oath that the witness is without the limits of the county where the suit is pending, or that such witness is dead, or that by reason of age, sickness, or official duty such witness is unable to attend the Court.



**Sec. 18.** That when any person may anticipate the institution of a suit in which he may be interested and may desire to perpetuate the testimony of a witness or witnesses to be used in such suit, he, his agent, or attorney, may file a written statement in the Court of the county where such suit could be instituted representing the facts and the names of the persons known to be interested adversely to said person, a copy of which statement and writ shall be served on the persons interested adversely, after which depositions may be taken and returned by any of the parties to such statement in like manner as provided for by this act, and an act "entitled an act to regulate proceedings in the District Courts," approved 13th May, A. D. 1846, and shall be entered on the records of the Court, and may be used in any suit or suits, which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits, and when suits have been instituted, all such depositions so taken and returned shall be subject to like exceptions as all other depositions.

**Sec. 19.** That any party to a civil suit, believing himself aggrieved by any final judgment or decree of the District Court may appeal from such final judgment or decree to the Supreme Court during the term of the District Court at which such final judgment or decree was rendered, and notice of such appeal shall in all cases be entered of record.

**Sec. 20.** That commissions to take the depositions of witnesses residing beyond the limits of the State, may be directed to any Notary Public or Clerk of a Court of record within the State or county where it is stated in the notice that such witness resides; and all such commissions shall be executed and returned in like manner as they are required to be executed and returned by a Judge of a Court of record; and depositions so taken and returned shall be governed by the same rules as are provided for other depositions in in the District Court.

**Sec. 21.** That nothing contained in this act shall be so construed, as to effect any section of an act entitled "an act to regulate proceedings in the District Courts," approved 13th May, A. D. 1846, that is not hereby repealed.

**Sec. 22.** That the seventh, eleventh, twelfth, fifteenth, seventeenth, twenty third, twenty fourth, twenty sixth, twenty

seventh, fifty first, seventieth, seventy fourth, seventy fifth, ninety fourth, one hundred and thirty fourth, and one hundred and forty first sections, of "an act to regulate proceedings in the District Courts," approved 13th May, A. D. 1846, are hereby repealed; and this act shall take effect from and after the first day of August next.

Approved, March 16, 1848.

## CHAPTER 96.

An Act supplementary to an act, entitled "an act to restore lands sold for Taxes and bid in by the Government, to the former owners," approved April 27th, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the time limited by the act, to which this is a supplement, to the first day of April, 1847, shall be extended to the first day of April, 1849, and that the State does hereby relinquish to the former owners thereof, all the lands purchased by the State for Taxes, upon said owners complying with the provisions of the first section of said act, to which this is a supplement, on or before the first day of April, 1849.

SEC. 2. *Be it further enacted,* That this act take effect from its passage.

Approved, March 16, 1848.

## CHAPTER 97.

An Act changing the name of the County Seat of Collin County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the County Seat of Collin County shall be known and called McKinney; and that this act take effect from the 1st day of August next:

Approved, March 16, 1848.

## CHAPTER 98.

## An Act to organize County Courts.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That there shall be in each county of this State an inferior Court, to be styled "The County Court" which shall be composed of one Chief Justice.

SEC. 2. That the said Court shall have the power to take the Probate of Wills, to appoint guardians, to grant letters testamentary, and of administration, to settle the accounts of executors, administrators and guardians, to transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, and persons *non compos mentis*, and the settlement, partition and distribution of such estates; which powers shall be exercised in the manner prescribed by law.

SEC. 3. That the said Courts shall have power to lay off and divide their respective counties into convenient precincts for the election of Justices of the Peace and Constables, to establish places in such precincts where elections shall be held; to establish public ferries in their respective counties, wherever the public interest may require; to license ferrymen and regulate the tolls to be charged at all public ferries in their counties; to lay out and establish, change and discontinue public roads and highways; to build bridges; to appoint overseers and apportion hands, to work on public roads, highways and bridges, and said Courts shall have and exercise general control and superintendence over all roads, highways, bridges and ferries in their counties; said Courts shall also have power, and it shall be their duty to provide Court Houses, Jails and all necessary public buildings; to allow and settle all county accounts, and direct their payment in such manner and at such times as may meet the public interest; to try contested elections for county officers; to appoint patrols for their respective counties, whenever in their opinion the public welfare may require it; and to exercise general jurisdiction over police matters in their respective counties; and it shall be the duty of said Courts to provide for the support of indigent persons resident in the county, who cannot support themselves, and for the burial of paupers.

SEC. 4. That the said County Courts shall have power to levy and collect a tax for county purposes, upon all subjects of

taxation in their respective counties on which a tax may be levied by the State; provided said tax shall not exceed in any one year, one half the amount of the tax levied by the State on such subjects of taxation; and provided, also, that such tax shall be apportioned in the same manner as the State tax; and the said tax upon all subjects of taxation other than trades and occupations and professions shall be assessed and collected by the assessor and collector of State taxes, in the same manner as the State tax, and shall be paid by him into the County Treasury; and all of said taxes upon trades, occupations and professions shall be collected by the county Treasurer in the same manner as the State tax upon such subjects is collected, and the County Treasurer shall have the same power to enforce the collection of such taxes for the counties as the assessor and collector has for the State.

SEC. 5. That the said Courts shall examine and adjust the accounts and books of the county Treasurer, and shall annually cause a detailed statement of all the receipts, expenditures and debts of their respective counties to be printed in some newspaper printed in the county, or to be posted up in some conspicuous place in the office of the Clerk of said Court.

SEC. 6. That the said Courts shall have and exercise all the powers which by law are vested in County Courts or boards of County Commissioners, or Chief and Associate Justices as Land Commissioners.

SEC. 7. That each county Court of this State shall have a Seal whereon shall be engraved the words "COUNTY COURT, \_\_\_\_\_ COUNTY, TEXAS;" the blank to be filled with the name of the county; which seal shall be kept in the Clerk's office, and shall be used in the authentication of all official acts of said Court, or of the Clerk of said Court, or of the Chief Justice of said Court, or of the County Commissioners when performing any of the duties of the Chief Justice which they are authorized to perform, in all cases where a seal shall be necessary for the authentication of any of said acts.

SEC. 8. That each County Court shall have full power and authority to issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such Court, and to enforce its jurisdiction; and all such notices, citations, writs and process shall be dated and signed by the Clerk, and when not otherwise directed by law shall be executed at least five days before the return

day thereof, which shall be specified in the same: provided however that subpoenas for witnesses may be executed and returned forthwith, and all such citations, writs, and process other than subpoenas for witnesses, shall have the seal of such Court affixed thereto, and all such citations, writs, subpoenas and process may be directed to any lawful officer of this State, whose duty it shall be to execute and return the same.

SEC. 9. That the County Courts shall have like power to punish contempts as the District Courts can or may have and exercise.

SEC. 10. That each County Court shall cause to be procured, and kept in the Clerk's office, suitable books in which it shall be the duty of the Clerk to record all the proceedings of each term of the Court, which record shall be read over, and signed by the Chief Justice or the member of the Court presiding, at the end of each term, and the Clerk shall also record all the proceedings of such Court that are authorized to take place in the vacation between the terms, and such records shall be read over on the first day of the term of the proper Court next after such proceedings took place, and shall be signed by the Chief Justice or member of the Court presiding.

SEC. 11. That there shall be elected, by the qualified electors of each County in this State, on the first Monday in August, 1848, and every two years thereafter, one Chief Justice and four County Commissioners who shall each hold their offices for a term of two years, and until their successors respectively shall be elected and qualified; in case of a vacancy in either of said offices, before the expiration of the term of two years from his election, an election shall be ordered to fill such office, for the unexpired term, and the person so elected shall continue to discharge the duties of his office until his successor shall be elected and qualified: provided, however, that not more than one of said Commissioners shall be a resident of the same Justices' precinct, and at any regular election, the four persons having the highest number of votes and resident in different precincts, shall be declared to be elected, and at an election to fill a vacancy, the person having the highest number of votes and not resident in a precinct where there is already one of said Commissioners, shall be declared to be elected, provided, also, that when any county shall not have as many as four precincts, then only two of said Commissioners may be elected from any one precinct.

SEC. 12. That neither the Chief Justice or any of said county Commissioners shall enter upon the duties of their offices until they shall have first taken and subscribed the oath of office, prescribed by the Constitution, before some officer authorized to administer oaths, which oath, together with the certificate of the officer who administered the same, shall be filed and recorded in the Clerk's office of the County Court, and if either of said officers shall neglect to accept and qualify as aforesaid, within ten days after he is declared duly elected, his election shall be deemed void, and another election shall be ordered to fill the office.

SEC. 13. That there shall be elected by the qualified electors of each county of this State, on the first Monday in August 1848, and every two years thereafter, a Clerk of said County Court, who shall hold his office for a term of two years, and until his successor is elected and qualified; in case of a vacancy in said office of Clerk, before the expiration of the term of two years from the regular election, an election shall be ordered to fill such vacancy, for the unexpired term, and the person so elected shall continue to perform the duties of his office until his successor shall be elected and qualified.

SEC. 14. That every person elected Clerk of the County Court, before entering upon the duties of the office, shall enter into bond, with two or more good and sufficient sureties, to be approved by the Chief Justice, in a sum not less than two thousand dollars, payable to the Governor of the State, and his successors in office, conditioned, that the person so elected, shall well and truly discharge and perform all the duties of the office of Clerk of the County Court, and shall also take and subscribe the oath of office prescribed by the Constitution, before some officer authorized to administer oaths, which shall be endorsed on, or attached to said bond, together with the certificate of the officer who administered the same: such bond and oath shall be recorded in the County Clerk's office, and shall be deposited with the Clerk of the District Court of the County; such bond shall not be void on the first recovery, but may be sued on from time to time, in the name or names of any person or persons injured by a breach thereof, until the whole penalty shall have been recovered.

SEC. 15. That the said Clerk shall have the custody of all the minutes, records, books, and papers belonging, or appertaining to the County Courts, and Probate Courts, that have

heretofore existed in their respective counties, and it shall be their duty to attend to the arrangement, and preservation of the same.

SEC. 16. That the Clerks of the several County Courts of this State shall have power, by writing, under their hand and seal, to appoint a deputy, for whose official acts, they shall be responsible, and such deputy shall take and subscribe the oath of office prescribed by the Constitution, before some officer authorized to administer oaths, which shall be endorsed on or attached to the appointment, together with the certificate of the officer who administered the same, and such appointment and oath shall be recorded with the county records, and deposited with the Clerk of the District Court of the county.

SEC. 17. That if from any cause the Clerk of the County Court is absent from the county seat, or is unable or unwilling to attend to the duties of his office, and he has no deputy, or if any duties are required to be done in the office of said Clerk, before an election can be had to fill a vacancy, the Chief Justice may, by an order entered on the minutes of the Court, either in vacation or term time, appoint a Clerk *pro tem* for said Court, and any person appointed shall take the oath, and give bond in like manner as herein provided for Clerks who are elected, but such appointment, shall in no case continue in force for more than thirty days.

SEC. 18. That whenever the office of Clerk of the County Court shall become vacant, all books, records, papers and effects belonging or appertaining to such office, shall be delivered to the person who may be appointed, or elected and qualified to fill such vacancy, when demanded by him, and any person having possession of any such books, records, papers, and effects, who shall neglect to deliver them to the person so appointed or elected and qualified, when demanded by him, may be cited to appear before the Chief Justice, either in term time or in vacation, to show cause why he should not so deliver such books, records, papers and effects, and on the return of such citation served, the Chief Justice may cause the person so neglecting to be arrested and imprisoned until he shall so deliver such books, records, papers and effects, unless good cause be shown why the same should not be done.

SEC. 19. That when in the record of any order, judgment or decree of the County Court, there shall be any mistake, and there shall be any papers on file in said Court, whereby such

record may be safely amended, the Chief Justice may cause the same to be amended in open Court according to the truth and justice of the case, but in all such cases the person or persons, to be effected by such amendment shall have notice of the application for such amendment.

SEC. 20. That the regular terms of the County Court shall commence and be held at the Court House of each county in this State, on the last Monday in every month, for the Probate of wills, the granting of letters testamentary, of administration and of guardianship, and the transaction of all business growing out of, or connected with the powers and jurisdiction of the County Court over executors, administrators and guardians, and the estates of deceased persons, minors, idiots, lunatics and persons *non compos mentis*; such terms shall be held by the Chief Justice, without the assistance of any of the County Commissioners, and may be continued from day to day for one week, but not longer, and the Chief Justice shall have authority to transact such business growing out of or connected with such powers and jurisdiction, during the vacation between said terms of said Court, as may be authorized by law.

SEC. 21. That a regular term of the County Court shall commence and be held at the Court House of each county in this State, on the third Monday in February, May, August and November, in every year, for the transaction of all business growing out of or connected with the powers and jurisdiction of the County Court, over all matters other than those named in the second and twentieth sections of this act; such terms shall be held by the Chief Justice, with the assistance of any two or more of the County Commissioners, and may continue for three days but not longer, and special terms of said Court may be held in like manner, and for like purposes as provided for in this section, at such other times as the Chief Justice may appoint, provided, however, that no county tax shall be levied unless at some one of the regular terms, and with the assent of the Chief Justice and three of the County Commissioners, or the assent of the four Commissioners.

SEC. 22. That the Chief Justice and County Commissioners shall each receive one dollar and fifty cents, for every day they may be necessarily engaged in attendance on any regular term of said Court, that they are required to hold, to be paid out of the County Treasury, but they shall not be paid for any special term.



**SEC. 23.** That during any vacancy in the office of Chief Justice, any two of the County Commissioners shall have power to hold all such Courts, as the Chief Justice can hold, and to do and perform all such official acts as he can do and perform.

**SEC. 24.** That if any person who has been elected or appointed Clerk of the County Court, shall neglect to give bond and take the oath of office, within ten days after he shall have been declared elected or appointed, the office shall be deemed vacant, and a new election ordered or a new appointment made.

**SEC. 25.** That if any Chief Justice, County Commissioner or Clerk of the County Court, shall be guilty of any misdemeanor in office, he may be indicted therefor, by a grand jury of the county, and on conviction in the District Court, his office shall be declared vacant by the Court, and he shall thereafter be incapable of holding any office in this State.

**SEC. 26.** That the Chief Justices, County Commissioners, Clerks of the County Courts, and their deputies, shall have power to administer oaths of office, and all other oaths and affirmations, and give certificates thereof.

**SEC. 27.** That the Chief Justice of the County Court, shall have power to take the acknowledgement and proof of all instruments of writing for the purpose of being recorded, and they shall also have power to examine and take the acknowledgement of married women, to all deeds of their separate property, and all deeds to property, for the sale of which their consent is required, in like manner, and under the same rules and regulations as are provided for Notaries Public, and all acts so done by any Chief Justice of a County Court, in this State, shall have the same force and effect as if done by a Notary Public.

**SEC. 28.** That all books, records, papers, and effects belonging, or appertaining to the County and Probate Courts of the different counties of this State shall be transferred to the County Court established by this act, and the said County Court shall have and exercise all the powers conferred by law on County Courts, which are not herein enumerated, and the various officers of said Court shall have and exercise all the powers not herein enumerated, which are conferred by law on such officers, and such powers shall be exercised in accordance with the laws conferring them, and the provisions of this act.

SEC. 29. That this act take effect and be in force on and after the first Monday in August, 1848, and on and after that day an act organizing County Courts, approved 13th May, 1846, shall be and is hereby repealed.

Approved, March 16, 1848.

## CHAPTER 99.

### An Act regulating Elections.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the County Courts of each county, shall at their first regular session, after this act takes effect and thereafter at their first regular session in each year if they deem necessary, designate such places for holding elections as may be most suitable and convenient for the people, which places so designated shall be numbered and called election precincts, and they shall also at the same time select and appoint from among the residents at, or near each election precinct, some suitable person to be the presiding officer at such precinct in all elections which shall be held thereat, during the year in which he may be appointed.

SEC. 2. *Be it further enacted,* That forms for notices, writs and returns of elections as furnished by the Secretary of State to the Chief Justice of each county, shall be preserved in the office of the County Clerk.

SEC. 3. *Be it further enacted,* That the Chief Justices of the several counties, or in case of vacancy in that office, or any inability of the Chief Justice to act, then any two of the County Commissioners, shall order all elections in their respective counties.

SEC. 4. *Be it further enacted,* That whenever an election may be ordered, except in cases of vacancy in the Legislature, at least ten days notice of the election shall be given by the officer ordering it, by notice posted up at each election precinct, or by publication in some newspaper if one be published in the county, specifying the time and places at which such election is to be held, and the officer or officers to be chosen, in

cases of elections to fill vacancies in the Legislature, like notices of not more than ten nor less than five days shall be given immediately on the receipt of the Governor's proclamation therefor.

SEC. 5. *Be it further enacted*, That in all cases of vacancy in any civil office of the county, by death, resignation or otherwise, which by law is filled by election of the people, the officer or officers authorized by this act to order elections, shall immediately make such order for an election to fill the vacancy, by giving like notice and issuing writs as prescribed for regulating elections.

SEC. 6. *Be it further enacted*, That it shall be the duty of the officer ordering an election, to issue writs of election, to the several presiding officers, who may have been previously appointed, as herein directed, or in case of the death, removal or other inability of any presiding officer, then to some other suitable person resident at, or near the precinct whom he may select as presiding officer in place of the one disabled to act, in which writs shall be stated particularly the officer or officers to be chosen, and the day of election, and he shall also send with the writ a copy of the form of election returns furnished by the Secretary of State.

SEC. 7. *Be it further enacted*, That the presiding officer of each precinct shall, on or before the day of election select two judges, and two clerks, who, together with the presiding officer, shall be the managers of the election, and he shall administer to each of them an oath, that they will well and truly conduct the election, without partiality or prejudice and agreeably to law, according to the best of their skill and understanding, and the presiding officer shall be also sworn by a Justice of the Peace, if one be present, if not, by one of the Judges.

SEC. 8. *Be it further enacted*, That in case the presiding officer appointed as herein before provided, should fail to attend on the day of election, or refuse to act, it shall be lawful for the electors present at the precinct on that day, to appoint a presiding officer to act at that election, and the person so appointed shall be authorized to act as presiding officer as fully as if appointed by the court, or officer ordering the election and shall be qualified in the same manner, provided, that in such cases the managers shall certify in their returns that the presiding officer failed to attend, or refused to act, and that

the person acting as such was duly chosen by the electors present.

SEC. 9. *Be it further enacted,* That electors in all cases shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, allowing one day for every twenty miles they may necessarily travel exclusive of the day of election, except in cases of treason, felony, or breach of the peace, and service of all other process for any other cause against any elector executed during such privilege shall be void.

SEC. 10. *Be it further enacted,* That the polls shall not be opened before nine o'clock, A. M., nor finally close before four o'clock, P. M., and not more than one adjournment shall be had during the day which shall not exceed one hour.

SEC. 11. *Be it further enacted,* That each of the clerks shall write and number the name of each voter, at the time of his voting, and in case the voter be not entitled to vote for all the officers, that the election is held for, at that precinct, the clerk shall set down opposite to his name, the officer or officers for which such voter is entitled to vote, for the purpose of afterwards purging the polls, in case the election shall be contested; and one of the managers shall in every case at the time of receiving the ticket or ballot write upon it the voters number, corresponding with the clerk's list; and no manager or other officer of an election shall unfold, or examine the vote received, nor shall they examine the endorsements on the tickets, when the votes are counted out, nor at any time subsequent to their being received into the ballot box, and no ticket not thus numbered shall be counted or noticed in counting out the votes.

SEC. 12. *Be it further enacted,* That immediately after closing the polls, the managers of the election shall proceed to count the votes, make out a correct return, signed by the managers, which shall be sealed up and delivered to the Chief Justice of the County, (or in the absence of the Chief Justice, to the Clerk of the County Court, who shall file the same in his office, and deliver said return to the Chief Justice on the day appointed to open and compare the polls;) by one of the managers, or some other respectable person, who shall swear that he received the package from one of the managers or the returning officer, and that the seals have not been broken since, which delivery shall be upon oath before the return day of said

election, a duplicate of which return, shall be kept by the presiding officer.

**SEC. 13.** *Be it further enacted,* That when any person offering to vote, shall be objected to, the managers shall examine him upon oath, touching the points objected to, and if he fail establishing his qualifications, to their satisfaction, his vote shall be rejected, and if any person shall vote for any officer or officers more than one time in the same day, or give an illegal vote, he shall be liable to indictment, and upon conviction before any competent tribunal, shall forfeit and pay for every such offence not less than fifty dollars, nor more than five hundred dollars, to go to the Treasury of the county.

**SEC. 14.** *Be it further enacted,* That if any manager or other person to whom election returns shall have been entrusted, fails or refuses to deliver the same on oath to the Chief Justice or County Clerk or other officer ordering the election within ten days of the day of election, such person so offending shall be liable to prosecution by information or indictment in the District Court of the county in which he so offends, and on conviction, shall forfeit and pay, or be fined in a sum not less than fifty, nor more than five hundred dollars, to go to the County Treasury.

**SEC. 15.** *Be it further enacted,* That the election returns shall not be opened by the officer to whom they are returned, before return day, or tenth day, and exclusive of the day of election; at the expiration of that time he shall open them, and estimate the result, recording the state of the polls of each precinct in a book to be kept by him for that purpose, and after making such estimate, he shall deliver to the candidate or candidates for whom the greatest number of votes have been polled, a certificate of election, naming therein the office to which he has been elected, the number of votes polled for him and the day on which the election was held, and shall sign the same and cause the seal of the County Court to be thereon impressed, and shall also make returns of the result of the election, for members of the Legislature, to the Secretary of State.

**SEC. 16.** *Be it further enacted,* That when an election shall have been held for members of the Legislature, in a district composed of more counties than one, the Chief Justice or other officer, to whom the returns in each county may be made, who is not authorized to give certificates of election to such members of the Legislature, shall make out and send complete re-

turns of such election for members to the Legislature in their respective counties immediately after examining and recording the same to the Chief Justice of the county who may be so authorized, which return shall be sealed up, and the name of the officer forwarding them, written across the seal, and the package marked on the outside, Election Returns which package may be sent by mail; the Chief Justice to whom the returns are so forwarded, shall upon the twentieth day after the election, which shall be the return day for such elections, open and examine said returns, and after estimating the result and recording the same, give a certificate of election to the candidate for whom the greatest number of votes shall have been polled.

SEC. 17. *Be it further enacted*, That whenever it so happens in any election, that there is a tie between two or more candidates for the same office, all of whom cannot be elected, the officer to whom the returns are made, shall declare such election void as between such candidates only, and immediately order a new election for that office, first giving not less than five days notice thereof.

SEC. 18. *Be it further enacted*, That any person intending to contest the election of any one holding a certificate of election shall within ten days after the return day give him notice thereof in writing, and deliver to him a written statement of the grounds on which he relies to sustain such contest, and the person elect as aforesaid, shall within ten days after receiving such notice, deliver or cause to be delivered his reply to the statement of the contestor.

SEC. 19. *Be it further enacted*, That the notices and written statements provided for in the foregoing section, shall be served on the opposite party in person if he can be found, if not, then by leaving the same at his usual place of abode, or business.

SEC. 20. *Be it further enacted*, That if the contest be for the validity of an election for any county officer, a copy of the notices and other papers served on the parties, shall be filed with the Clerk of the County court and as soon as convenient the County Court shall convene in special session for the trial of the contest, notice of the time of meeting having been given to the parties, and if on trial any votes be found to be illegal, the court shall subtract such votes from the poll of the candidate for whom they are given, and shall also hear and consider the

evidence given by the parties for and against, the grounds assumed by them on their written statement, and no other, and after full and fair investigation they shall decide to whom the office belongs or set the election aside, and order a new one, as the case may require.

SEC. 21. *Be it further enacted*, That if the contest be for the trial of the validity of an election for members of the Legislature, a copy of the notices and other papers served on the parties as required in the 18th and 19th sections of this act, shall within ten days after the service thereof be filed with the Chief Justice or officer to whom the returns are made, and he shall envelope the same, together with a copy of the poll book or register of each precinct or county, returned to him and seal the same, writing his name across the seals, and shall address the packet to the Speaker of the House of Representatives, or President of the Senate, as the case may be; and shall forward the same by mail to the seat of government so as to reach there before the convening of the Legislature if possible.

SEC. 22. *Be it further enacted*, That in the cases provided for in the preceding section, so soon as the notice and other papers are filed, either party may apply to the Clerk of the County Court, for a commission to be directed to some Notary Public, or two Justices of the Peace, to act as commissioners in taking testimony by deposition, touching the pending contest, of the time and place of taking testimony, both parties shall be notified by the commissioners; no witness shall be examined without such notice, except in the presence of the parties or their attorneys, and the examination shall be conducted according to the rules of evidence, not more than fifteen days from the issuance of the commission shall be allowed to take testimony, and at the expiration of that time, the commissioner shall return the testimony written in a fair hand and signed by the several witnesses, and transfer to the Clerk of the County Court, who shall seal the same and address, and send them by mail to the Speaker of the House of Representatives, or President of the Senate, as the case may be, endorsing on the outside what it contains.

SEC. 23. *Be it further enacted*, That if any officer conducting an election, or to whom any duty in relation thereto is assigned by law, shall directly or indirectly so interfere in the election as to show undue partiality or use undue influence in the execution of his office for any of the candidates, he shall be

liable to prosecution by information or indictment in the District Court, and on conviction, shall forfeit and pay, or be fined in a sum not less than fifty nor more than five hundred dollars to be paid into the County Treasury, and moreover shall be deprived of the right of again filling any such office.

SEC. 24. *Be it further enacted*, That any person being a candidate who shall directly or indirectly offer, give or agree to give any elector, money or other reward in order to be elected, if such candidate shall be elected to the Legislature, he shall on due proof thereof, made to the House of which he is a member, be expelled and be disabled to be again elected for two years, and if he was a candidate for any county office, shall, on conviction of the offence mentioned in this section, be fined in a sum not less than twenty-five nor more than two hundred dollars, or be removed from office, at the discretion of the jury.

SEC. 25. *Be it further enacted*, That any person whatever, who shall in any election use or attempt to use any undue influence thereon, by threat, direct or indirect, by exciting or raising any tumult at any election, shall be liable to prosecution by information or indictment, in the District Court, and on conviction shall be fined in a sum not less than twenty nor more than one hundred dollars, or be imprisoned for not more than one month, at the discretion of the jury trying the case.

SEC. 26. *Be it further enacted*, That in all cases where a county is not organized, and there is no officer in the same authorized by law to organize such county, the Chief Justice of the nearest county, which is organized, may order elections for county officers, in any such disorganized county, and appoint the presiding officers and managers and Clerks of election as prescribed by law in other cases.

SEC. 27. *Be it further enacted*, That if from any cause there should be a vacancy in the office of Chief Justice of any county, a majority of the Commissioners of the County Court shall order a new election to fill such vacancy, to be conducted in the same manner and form as other elections for county officers.

SEC. 28. *Be it further enacted*, That an act entitled an act regulating elections, approved, May 11th, 1846, be and the same is hereby repealed, and that this act take effect and be in force from and after the first day of May next.

Approved, March 16, 1848.



## CHAPTER 100.

An Act to amend the seventeenth and nineteenth sections of  
"an act regulating Juries," approved 4th May, A. D. 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the seventeenth section of the above recited act, be so amended as to read as follows, to wit: That when from challenges or any other cause, there shall not be a jury to determine any case, civil or criminal, which may be called for trial, the Sheriff or other officer shall, by order of the Court, return Jurymen of the by-standers, sufficient to form or complete the panel, and if during the trial of any civil or criminal case, any Juror shall from any cause become unable to serve, the Sheriff or other officer shall, by order of the Court return a Jurymen of the by-standers to supply his place, and he shall be sworn as other talismen, and the trial commenced anew; provided, no person shall be considered competent to serve on any Jury, civil or criminal, whose name is not enrolled upon the list required to be kept by the County Court, if the objection is made, before such person is sworn upon the Jury.

SEC. 2. The nineteenth section of the above recited act, shall be so amended as to read as follows: The Court shall have power to relieve one set of Jurors at any time by causing others to be summoned to supply their places, who shall be liable to serve for such a length of time as the Court may deem proper, and may likewise be discharged, and others again summoned to supply their places in such manner, as the Court may think most convenient and proper, and best calculated to despatch business, and subserve the public interest.

SEC. 3. This act shall go into effect from the time of its passage.

Approved, March 16, 1848.

## CHAPTER 101.

An Act to require Sheriffs, Clerks of the District Court, and Clerks of the County Court to keep their offices at the County seats of their respective counties.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Sheriffs, Clerks of the District Court, and Clerks of the County Court of the several counties of this State, shall be, and they are hereby required to keep their several offices at the county seats of their respective counties.

SEC. 2. That in all cases, where the said Sheriff, and Clerks do not reside at the county seats of their respective counties, they shall be, and are hereby required, to have deputies in their several offices, residing at said county seats.

SEC. 3. That any Sheriff, Clerk of the District Court, or Clerk of the County Court in this State, who shall fail to comply with the provisions of this act, shall be liable to indictment by the Grand Jury of his county, and on conviction by a Petit Jury of his county, in the District Court, shall be removed from office, by the judgment of said District Court, and shall moreover be liable to any person injured by such failure, for all damages occasioned by such failure.

Approved, March 16, 1848.

## CHAPTER 102.

An Act to be entitled an act, to make valid the acts of John D. Banton, as Clerk of the District Court of the County of Walker.

Whereas, John D. Banton was elected Clerk of the District Court of the county of Walker, on the second Monday in July, 1846; and, whereas, the said John D. Banton, after giving bond, and entering upon the duties of said office, died, without having received a Commission from the Governor of the State, Therefore,

*Be it enacted by the Legislature of the State of Texas.* That all the acts of said John D. Banton or his deputy, as Clerk of the District Court of the county of Walker aforesaid; be, and the same are hereby legalized, and made valid, as though he had received a commission in conformity to law; and that this act be in force from and after its passage.

Approved, March 16, 1848.

### CHAPTER 103.

#### An Act to regulate the descent and distribution of Intestates Estates.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the estates of suicides shall descend and vest as in cases of natural death. If any person shall be killed by casualty there shall be no forfeiture by reason thereof.

**SEC. 2.** When any person having title to any estate of inheritance, real, personal or mixed, shall die intestate, as to such estate, and shall leave no surviving husband or wife it shall descend and pass in parcenary to his or her kindred, male and female, in the following course, that is to say: 1st. To his or her children and their descendants, if any there be: 2ndly: If there be no children nor their descendants then to his or her father and mother, in equal portions. But if only the father or mother survive the intestate, then his or her estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased and to their descendants, or to such of them as there be, but if there be none such, then the whole estate shall be inherited by the surviving father or mother: 3dly. If there be neither father or mother then the whole of such estate shall pass to the brothers and sisters of the intestate and to their descendants, or to such of them as there be: 4thly. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course; that is to say—to the Grand Father and Grand Mother, in equal portions,

but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased Grand Father or Grand Mother: If there be no such descendants, then the whole estate shall be inherited by the surviving Grand Father or Grand Mother: If there be no surviving Grand Father or Grand Mother, then the whole of such estate shall go to their descendants, or to such of them as there be, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants, or to such of them as there be.

SEC. 3. There shall be no distinction in regulating the descent and distribution of intestates estates between property which may have been derived by such intestate, by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother, and all the estate to which such intestate may have had title, at the time of death, shall descend and vest in the heirs of such person in the same manner as if he or she had been the original purchaser thereof.

SEC. 4. When any person having title to any estate of inheritance, real, personal or mixed shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows: 1st. If the deceased have a child or children or their descendants, the surviving husband or wife shall take one third of the personal estate, not to include slaves, and the balance of such personal estate shall go the child or children of the deceased and their descendants—the surviving husband or wife shall also be entitled to an estate for life, in one third of the lands and slaves of the intestate: with remainder to the child or children of the intestate and their descendants: 2ndly. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate of the intestate, not to include slaves, and to one half of the lands and slaves of the intestate, without remainder to any person or persons, and the other half shall pass and be inherited according to the rules of descent and distribution, as prescribed in the foregoing sections of this act, provided, however, that if the deceased have neither surviving father or mother, nor surviving brothers and sisters or their descendants, then the surviving hus-

band or wife shall be entitled to the whole of the estate of such intestate, real, personal and mixed.

SEC. 5. No right of inheritance shall accrue to any person whatsoever, other than to children of the intestate, unless they be in being, and capable in law to take as heirs at the time of the intestates death.

SEC. 6. In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collaterals be of the whole blood, and the other part of the half blood only, of the intestate, those of the half blood shall inherit only half so much as those of the whole blood, but if all be of the half blood, they shall have whole portions.

SEC. 7. Where the children of the intestate's brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the same degree, come into the partition, they shall take "*per capita*," that is to say by persons, and where a part of them being dead, and a part living, the issue of those dead have right to partition, such issue shall take "*per stirpes*" or by stocks, that is to say the shares of their deceased parents.

SEC. 8. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his life time, any real, personal or mixed estate, by way of advancement, and shall choose to come into the partition and distribution of the estate with the other parceners and distributees, such advancement, of real, personal and mixed estate, shall be brought into *Hotch Pot* with the whole estate, real, personal or mixed, descended, and such party returning such advancement, as aforesaid, shall thereupon, be entitled to his her or their proper portion of the whole estate so descended, real, personal and mixed, and, provided, that it shall be sufficient to account for the property so brought into *Hotch pot* at the time it was advanced, and when money or negroes shall have been advanced, the interest of the one, or the increase of the other, need not be brought into *Hotch pot*.

SEC. 9. In making title to land by descent, it shall be no bar to a party, that any ancestor through whom he derives his descent from the intestate, is or hath been an alien, and every alien, to whom any land may be devised or may descend, shall have nine years to become a citizen of the State, and take possession of such land, or shall have nine years to sell the same,

before it shall be declared forfeited or shall escheat to the Government.

SEC. 10. Where a man having by a woman a child or children, shall afterwards intermarry with such women, such child or children if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also in marriages deemed null in law, shall nevertheless be legitimate.

SEC. 11. Bastards shall be capable of inheriting from and through their mothers and of transmitting estates, and shall also be entitled to distributive shares of the personal estates of any of their kindred on the part of their mothers, in like manner as if they had been lawfully begotten of such mothers.

SEC. 12. When two or more persons hold an estate, real, personal or mixed jointly, and one joint tenant dies before severance, his interest in said joint estate shall not survive to the remaining joint tenant or joint tenants, but shall descend to and be vested in the heirs or legal representatives of such deceased joint tenant, in the same manner as if his interest had been severed and ascertained.

SEC. 13. This act shall not be construed to alter or change in any manner, the mode now pointed out by law, for distributing the common property of the husband and wife, upon the death of one of them.

SEC. 14. An act to regulate the descent and distribution of intestates estates approved 28th January 1840; and, an act amendatory of said act passed 17th January 1842, are hereby repealed, and this act shall go into effect from the time of its passage.

Approved, March 18, 1848.

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## CHAPTER 104.

Joint Resolution, on the "Proviso," Slavery, the Tariff, and the War against Mexico.

SECTION 1. *Be it resolved by the Legislature of the State of Texas, That any attempt on the part of the Congress of the Uni-*

ted States to interfere with the domestic and internal policy of the States or Territories, is unwarranted by the Constitution of the United States, and in violation of the rights of the States. The "Proviso," if submitted to, would prevent the slaveholding States from enjoying the full benefits of any territory which may be hereafter acquired, by the United States. The Constitution of the United States recognizes slavery, as one of our domestic institutions, and we acknowledge no right to abolish it, but that which belongs to the slaveholding States themselves. We will not submit to any law, which prohibits the citizens of the Southern States, from taking their property to any territory which may be acquired from Mexico. We are willing to submit to the compromises of the Constitution, but we will never submit to a usurpation of power which robs us of our rights.

*Resolved further,* That we deny the right of the Congress of the United States, to pass any law prohibiting any State, that may hereafter be admitted into the Union, from coming in, either with or without slavery, as the popular voice of such State may determine. This principle we will not yield.

*Resolved further,* That the just and equitable mode of raising revenue, is to levy a tariff on the advalorem principle, for purposes of revenue, as contra distinguished from the protective policy. That we believe that the tariff of 1846, will yield more revenue to the United States, than could be derived from the tariff of 1842, and that the former is at the same time, less burdensome to the people than the latter would be; and believing it to be a cardinal principle of government, that the burdens should be equally borne by all classes of the community, we hope that the general principles of the tariff of 1846, will not be altered. We are willing to pay for "Revenue," but not for "Protection."

*Resolved further,* That we consider the war with Mexico, as necessary to the vindication of our national honor, as a war which was brought on by Mexico, by making an attack upon the army of the United States, at a time when the Mexican government expected to destroy that gallant band—who have added fresh lustre to the American name. After the bad faith, which has characterized the Mexicans, we have nothing to hope for, but that justice which we must compel them to grant by force of arms. We recommend, therefore, a vigorous prosecution of the war, until we obtain full indemnity for the wrongs and injuries done us. If it be necessary to appropriate

some of the most valuable portions of Mexican Territory, we recommend that it be done. We should never give up California. We should secure a communication between the Atlantic and Pacific oceans, across the Isthmus, for all time to come. We should take possession of the Mexican ports, collect her revenues, and levy a tax upon all the property of the nation, to support our armies. As long as Mexico compels us to keep an army there, we should make her support it.

*Resolved further*, That our Senators be instructed, and our Representatives in Congress be requested, to support the principles set forth in the foregoing resolutions, and to use all just and Constitutional means to resist encroachments upon the rights of the slaveholding States.

*Resolved further*, That the Governor be requested to forward a copy of these Resolutions to the President of the United States, the Governors of each of the States in the Union, and to our Senators and Representatives in Congress, under the seal of the State, and with his signature of approval.

Approved, March 18. 1848.

## CHAPTER 105.

An Act to define the times for holding the District Courts in the fifth, sixth, and eighth Judicial Districts.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas*, That the District Courts for the fifth, sixth and eighth Judicial Districts, shall be held at the times herein specified, to wit: For the fifth District.

In the County of Sabine, on the first Mondays in March and September, and may continue two weeks.

In the County of Shelby, on the third Mondays in March and September, and may continue two weeks.

In the County of San Augustine, on the first Mondays in April and October, and may continue three weeks.

In Jasper County, on the fourth Mondays in April and October, and may continue one week.



In Newton County, on the first Mondays after the fourth Mondays in April and October, and may continue one week.

In Angelina County, on the second Mondays after the fourth Mondays in April and October, and may continue one week.

In Nacogdoches County, on the third Mondays after the fourth Mondays in April and October, and may continue until the business shall be disposed of.

For the sixth District: In Cass County, on the third Mondays in March and September, and may continue two weeks.

In Upshur County, on the third Mondays after the third Mondays in March and September, and may continue one week.

In Smith County, on the fourth Mondays after the third Mondays in March and September, and may continue two weeks.

In Cherokee County, on the sixth Mondays after the third Mondays in March and September, and may continue two weeks.

In Rusk County, on the eighth Mondays after the third Mondays in March and September, and may continue three weeks.

In Panola County, on the eleventh Mondays after the third Mondays in March and September, and may continue two weeks.

In Harrison County, on the thirteenth Mondays after the third Mondays in March and September, and may continue until the business shall be finished.

In the eighth District: In Bowie County, on the first Mondays in March and September, and may continue one week.

In Titus County, on the second Mondays in March and September, and may continue one week.

In Hopkins County, on the third Mondays in March and September, and may continue one week.

In Hunt County, on the fourth Mondays in March and September, and may continue one week.

In Fannin County, on the first Mondays in April and October, and may continue two weeks.

In Lamar County, on the third Mondays in April and October, and may continue two weeks.

In Red River County, on the first Mondays after the fourth Mondays in April and October, and may continue three weeks.

Approved, March 18, 1848.

## CHAPTER 106.

An Act to prescribe the time of holding the Courts in the second Judicial District of the State of Texas.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the terms of the District Court in the second Judicial District, shall be held in each county in the District, twice in each year, as follows:

In the County of Fayette, on the first Monday in March and the third Monday in September, and may continue in session two weeks.

In the County of Bastrop, on the second Monday after the first Monday in March, and the second Monday after the third Monday in September, and may continue in session one week.

In the County of Williamson, on the third Monday after the first Monday in March and the third Monday after the third Monday in September, and may continue in session one week.

In the County of Travis on the fourth Monday after the first Monday in March, and the fourth Monday after the third Monday in September, and may continue in session two weeks.

In the County of Caldwell, on the sixth Monday after the first Monday in March, and the sixth Monday after the third Monday in September, and may continue in session one week.

In the County of Hays, on the seventh Monday after the first Monday in March and the seventh Monday after the third Monday in September, and may continue in session one week.

In the County of Guadalupe, on the eighth Monday after the first Monday in March, and the eighth Monday after the third Monday in September, and may continue in session one week.

In the County of Comal, on the ninth Monday after the first Monday in March, and the ninth Monday after the third Monday in September, and may continue in session one week.

In the County of Gillespie, on the tenth Monday after the first Monday in March, and the tenth Monday after the third Monday in September, and may continue in session two weeks.

**SEC. 2.** *Be it further enacted,* That all process returnable to and cases triable at the regular terms of the District Courts of the second Judicial District, as now provided for by law, shall be returnable to, and triable at the regular terms herein prescribed, and that all laws and parts of laws conflicting with

the provisions of this act, be and the same are hereby repealed, and that this act take effect from and after the first Monday of August next.

Approved, March 18, 1848.

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## CHAPTER 107.

An Act, Supplementary to an act entitled an act to regulate the Public Printing, approved March 8, 1848.

Whereas, by one of the provisions of the above recited act, the Secretary of State is required to furnish the Public Printer, with a copy of the laws, within six days after their passage, and whereas, without further assistance, it will be impossible for him to comply with said provision ; Therefore,

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the Secretary of State be authorized to employ the assistance necessary to enable him to furnish a copy of the laws, within the time prescribed by the above recited act: *Provided,* that the compensation to be allowed therefor, shall not exceed that allowed by the said act for copying the Journals of both Houses.

**SEC. 2.** *Be it further enacted,* That this act take effect, and be in force from and after its passage.

Approved, March 18, 1848.

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## CHAPTER 108.

An Act appropriating certain fines and forfeitures.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That all monies collected as penalties, fines and forfeitures in behalf of the State, shall be paid into the County Treasury, of the County, in which such fines and penalties may

be imposed, or forfeitures take place, to be under the control of the County Court.

SEC. 2. *Be it further enacted*, That when the Sheriff or other officer shall collect any such monies, he shall pay them into the County Treasurer, and the County Treasurer shall pay out the same in the manner directed by the County Court.

Approved, March 18, 1848.

## CHAPTER 109.

An Act to prevent burning the woods and prairies.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall not be lawful for any person or persons, to wilfully burn or cause to be burned, any woodlands or prairie, not his own, within any county of this State, at any time, between the first day of the month of July in each and every year, and the fifteenth day of February in the succeeding year.

SEC. 2. *Be it further enacted*, That when any person shall be charged, on oath made before any Justice of the Peace of the county, in which such offence is committed, with a violation of the provisions of the first section of this act, it shall be the duty of such Justice or any other Justice of the Peace of the county, to cause such person to be arrested and brought before him by warrant under his hand, to be executed by any constable of the county, or other proper officer, and if upon a full investigation, such Justice shall be satisfied, that such person has wilfully violated the provisions of this act, it shall be the duty of such Justice, to fine any such person not less than ten dollars, nor more than fifty dollars, which shall go to the use of the county in which such offence was committed, and in default of payment thereof, such Justice shall commit such person to the County Jail, until such fine and costs are paid, provided, however, that in all such cases, if the accused shall demand a trial by jury, such Justice shall forthwith summon a Jury of six men, as in other cases, and the Jury shall try the cause, and assess the fine as aforesaid.

SEC. 3. *Be it further enacted*, That this act shall not be so

construed, as to release any person from liability, in a civil suit for damages occasioned by burning.

Approved, March 18, 1848.

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## CHAPTER 110.

Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their efforts to have a law passed to extend the jurisdiction of Texas over one half of Sabine Pass, Lake and River.

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That our Senators be instructed and our Representatives in Congress be requested to use their efforts to have a law passed by Congress extending the jurisdiction of Texas over one half of the waters of Sabine Lake, Sabine Pass and Sabine River up to the 32d deg. of north latitude.

SEC. 2. *Be it further resolved*, That the Governor of this State be required to transmit to each of our Senators and Representatives in Congress a copy of the foregoing Joint Resolution.

Approved, March 18, 1848.

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## CHAPTER 111.

An Act providing for the payment of Jurors.

SECTION 1. *Be it enacted by the Legislature of the State of Texas* That Jurors, shall each be entitled to one dollar and twenty five cents, for each day, he shall attend the Court, and all necessary expenses of ferriage.

SEC. 2. That all tax fees collected on suits, shall be applied to the payment of Jurors.

SEC. 3. That this act shall take effect from and after the first day of August next.

Approved, March 18, 1848.

## CHAPTER 112.

An Act to establish the method of trying the right of property levied on under writs of Execution, Sequestration and Attachment, where the same is claimed by a person not a party to such writs.

SECTION 1. *Be it enacted by the Legislature of the State of Texas.* That whenever any Sheriff or other lawful officer shall levy a writ of execution, sequestration or attachment, upon any personal property, and such property or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent may make oath in writing, before some Justice of the Peace, of the county where the levy was made, that such claim is made in good faith, and present such oath in writing, to the officer who made such levy, and may also execute and deliver to the officer who made such levy, his bond, with two or more good and sufficient sureties, to be approved of by such officer, payable, to the plaintiff in such writ, for an amount equal to double the value of the property so claimed, to be assessed by such officer, conditioned that the party making such claim, in case he fails to establish his right to such property, shall return the same to the officer making such levy or his successor, and shall also pay to the plaintiff in such writ, all damages that may be awarded against him, by the Jury, on the trial of the right to such property; whereupon it shall be the duty of the officer, receiving such oath and bond, to deliver such property, so claimed, to the person so claiming it.

Sec. 2. That whenever any person shall claim property; and shall make the oath, and give the bond, as provided for in the first section of this act, if the writ, under which such levy was made, was issued by any Justice of the Peace or Court of the county where such levy was made, the Sheriff or other officer, receiving such oath and bond, shall endorse on the writ, that such claim has been made, and oath and bond given, stating by whom, and shall also endorse on such bond, the value of the property, as assessed by himself, and shall forthwith return such bond and oath to the Justice or the Clerk of the Court from which the said writ issued; but if the writ, under which such levy was made, was issued by any Justice of the Peace or Court of another county, than that in which such levy was

made, then the Sheriff or other officer, receiving such oath and bond, shall endorse on such bond, the value of the property as assessed by himself, and shall forthwith return such bond and oath, with a copy of the writ, to some Justice of the Peace of his county, if the writ was issued by a Justice or to the District Court of his county, if the writ was issued by any other authority than a Justice of the Peace; and he shall also endorse on the writ, that such claim has been made, and oath and bond given, stating by whom, and to what Justice or Court, the bond has been returned, and at what time it was so returned, and shall forthwith return such writ to the Justice or Court from which it issued.

SEC. 3. That whenever any oath and bond, for the trial of the right of property, shall be returned to any Court other than a Justice's Court, as provided for in the second section of this act, it shall be the duty of the Clerk of such Court, to docket the same in the name of the plaintiff in the writ, as the plaintiff, and the claimant of the property as defendant, and at the first term of the Court thereafter, if both parties appear, the Court shall direct an issue to be made up between the parties and tried by a Jury as in other cases, but if the plaintiff appears and the defendant fails to appear, or neglects or refuses to join issue under the directions of the Court, within the time prescribed for pleading, the plaintiff shall have judgment by default as in other cases. If the plaintiff does not appear at the said first term, the case shall be continued to the next term, when if he appears, the like proceedings may be had as at the said first term, but if he does not then appear on or before the first day of said term, he shall be non suited, provided that in all such cases, if the property so claimed, was taken from the possession of the claimant, then the burden of proof shall be upon the plaintiff in the original writ of execution, sequestration or attachment; but if the property so claimed, was taken from the possession of any other person, than such claimant, then the burden of proof shall be upon such claimant.

SEC. 4. That whenever any oath and bond for the trial of the right of property, shall be returned, under the provisions of the second section of this act to any Justice of the Peace, the plaintiff in the writ, may, at any time, apply to such Justice for a citation against such claimant, and on the return thereof executed, a trial of the right to such property shall be had before such Justice in like manner as other trials are had before

Justices of the Peace, but if the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff, and if it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant.

§ SEC. 5. That in all trials of the right of property under the provisions of this act, if the claimant shall fail to establish his right to the property, the Court or Justice trying the same shall give judgment against all the obligors in the claimants bond for ten per cent damages, on the value of the property claimed, unless such value is greater, than the amount claimed under the writ, by virtue of which such property was levied, in which case, such damages shall be on the amount claimed under said writ.

SEC. 6. That in all trials of the right of property, under the provisions of this act, in any County other than that in which the writ issued under which the levy was made, the copy of the writ, required to be returned by the Sheriff or other officer, making the levy, shall be received in evidence, in like manner, as the original could be.

§ SEC. 7. That in all cases, when any claimant of property, under the provisions of this act, shall fail to establish his right thereto, and judgment shall be rendered against him if he shall fail to return such property in as good condition as when he received it, to the officer from whose possession he received it, or his successor, within ten days after the rendition of such judgment, such officer or his successor, shall certify such failure to the Court or Justice by which such judgment was rendered, whereupon it shall be the duty of the Justice or Clerk, having the custody of such bond, to endorse thereon that it has been forfeited, when such bond shall have the force and effect of a judgment, against all the obligors for the value of such property, with legal interest thereon from its date, upon which execution may issue as on other judgments.

SEC. 8. That a claim made to property, under the provisions of this act, shall operate as a release, by the claimant, of all damages against the Sheriff or other officer who levied on such property.

SEC. 9. That proceedings for the trial of the right of property under the provisions of this act shall in no case prevent the plaintiff in the writ from having a levy made upon other property of the defendant than that levied on and claimed if it can be found.



Sec. 10. That "an act to establish the method of trying the right of property levied on by execution, when the property is claimed by any person not a party to such execution" approved, February 5th, 1840, shall be and is hereby repealed.

Approved, March 18, 1848.

## CHAPTER 113.

An Act to repeal the fourth section of an act requiring the Commissioner of the General Land Office to issue Patents upon unconditional headright certificates for land, approved, May 12th, 1846.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the fourth section of an act requiring the Commissioner of the General Land Office to issue Patents upon unconditional headright certificates for land, approved 12th May, 1846, be and the same is hereby repealed, and that this act take effect from and after its passage.

Approved, March 18, 1848.

## CHAPTER 114.

An Act to amend an act supplementary to an act to detect fraudulent land certificates and to provide for issuing Patents to legal claimants, passed at the fifth Congress of the Republic of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all certificates heretofore, or that may be hereafter issued by the Supreme or District Courts, in accordance with the provisions of an act passed by the fifth Congress of the Republic of Texas, shall be as valid and legal as if issued by any other competent authority.

**SEC. 2.** *Be it further enacted,* That the Commissioner of the General Land Office be, and is hereby required to issue patents, upon all surveys made by authority of such certificates, and that a certified copy of the decision of such Court or Courts, or either of them, be full authority, and sufficient evidence, for the same, provided that the survey is correct and made according to law.

Approved, March 18, 1848.

## CHAPTER 115.

### An Act for the regulations of Pilots at the mouth of the Brazos River.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the Governor be and he is hereby authorized and required to appoint by and with the advice and consent of the Senate, one or more competent persons to act as Pilots at the mouth of the Brazos river in this State, and the person or persons so appointed shall hold their offices for two years and until their successors are appointed and qualified in the manner provided for in this act.

**SEC. 2.** That before any person appointed under the provisions of this act shall enter upon the discharge of his duties, he shall execute and deliver to the Chief Justice of Brazoria county a bond with two or more good and sufficient sureties, to be approved by said Chief Justice, and payable to the Governor of the State in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and shall also take and subscribe the oath of office prescribed by the Constitution, which oath shall be endorsed on or annexed to said bond with the certificate of the officer administering the same. Said bond and oath shall be recorded in the office of the Clerk of the County Court, and deposited therein, and said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person or persons injured by a breach thereof, until the whole penalty shall have been recovered.

SEC. 3. That whenever a vacancy shall happen in either of said offices during the recess of the Senate, the Governor shall have power to make an appointment to fill such vacancy, and the person so appointed shall continue to perform the duties of his office until a successor is appointed and qualified in the manner provided for original appointments.

SEC. 4. That the said Pilots shall be entitled to three dollars for each foot of water that any vessel may draw at the time of piloting the same, and whenever a vessel shall decline the service of a Pilot offered outside the bar and shall enter said river without the aid of one, the Pilot who first so offered his services, shall be entitled to one half of the above amount, and any vessel which after being brought in by a Pilot shall go out without employing one shall be liable to the payment of half pilotage to the pilot who brought her in: *provided*, however, that all vessels of thirty tons burthen and under shall be free from any charge for pilotage unless for actual service.

SEC. 5. That the consignees of any vessel shall be held liable and responsible for the pilotage of said vessel.

SEC. 6. That if any person not appointed a Pilot or deputy Pilot, shall pilot any ship or vessel out of, or into said river when a Pilot or deputy Pilot has offered such service, the person so piloting shall be liable to pay to the Pilot or deputy Pilot who offered such service full pilotage for such vessel, to be recovered by suit before any Justice of the Peace, of the county.

SEC. 7. That each Pilot appointed under the provisions of this act may by writing under his hand appoint a deputy Pilot to discharge his duties, but he shall be responsible for all official acts of such deputy in like manner as if such acts were done by himself.

Approved, March 18, 1848.

## CHAPTER 116.

An Act Supplementary to an act entitled "an act to establish the Judicial Districts of the District Courts."

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That so much of the act to which this is a supplement,

as relates to the ninth Judicial District, take effect and be in force from and after the passage of this act, and that this act be in force from and after its passage.

Approved, March 18, 1848.

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## CHAPTER 117.

An Act to change the name of Ralph William Peacock to John Bowen.

Whereas, Ralph William Peacock, a native of Philadelphia, in the State of Pennsylvania, at present a citizen of San Antonio, Bexar county, in the State of Texas, is testamentary heir by the will of his half brother John Bowen, deceased, to "Bowen Hall Estate," in the Island of Jamaica, under certain conditions, whereby it is necessary that the name of said R. W. Peacock, be changed to John Bowen; Therefore,

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the name of Ralph William Peacock, be and is hereby changed to John Bowen.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage.

Approved, March 18, 1848.

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## CHAPTER 118.

An Act to secure to the Colonists of Fisher and Miller's Colony the lands to which they may be entitled.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*; That every colonist, or the heirs or administrators of such colonists introduced into Texas by the German emigration Company, under and by virtue of the colonization contract of Henry F. Fisher and Burchard Miller with the President of

the late Republic of Texas, shall receive the quantity of land to which such colonist may be entitled, to wit: six hundred and forty acres for each head of a family; and three hundred and twenty for each single man over the age of seventeen years; provided that nothing contained in this bill shall be construed to place the contractors of said Colony in a better condition with regard to the State of Texas than they would be in if this bill had not been passed.

SEC. 2. That the Governor of this State shall appoint a Commissioner, whose duty it shall be to hear proof and determine what colonists have been introduced into Texas by said company, in virtue of said colonization contract, and said Commissioner shall issue to the parties entitled to the same, or the heirs or administrators of such parties, a certificate for their proper quantity of land; which certificate shall contain the condition that, before patent can issue on the same, the grantee of such certificate shall, within two years from the date thereof, settle within the limits of the colony of the said Fisher and Miller; and when said condition is complied with, the party shall be entitled to patent for his land in such manner as may hereafter be provided by law.

SEC. 3. That the grantees of certificates issued in conformity with this act shall select their land in manner herein set forth, to wit: the party in interest shall designate to the Commissioner issuing the certificate as aforesaid, the tract of land such party may wish within the colony grant, as defined by the said colonization contract; and the Commissioner shall attach to the certificate a description of the section thus selected; provided that in the selection of the lands regard must be had to the provisions of the aforesaid colonization contract in reference to the alternate sections.

SEC. 4. That it shall be the duty of the District Surveyor of Bexar District to furnish the Commissioner of the General Land Office with a map of all surveys within the aforesaid colony limits; and the Commissioner of the General Land Office shall furnish a similar map to the Commissioner appointed by virtue of this act; and upon these maps the land selected as provided in the preceding section shall be noted.

SEC. 5. That it shall be the duty of the Commissioner appointed in virtue of this act to send to the Commissioner of the General Land office, a monthly list, under oath, containing a description of certificates issued in compliance with this act;

and he shall also keep a record in a well bound book, showing the quantity of land for which each certificate issued, the names of the parties obtaining the same, and the names of the witnesses who made the proof; and said Commissioner shall deposit said record book in the General Land Office at the expiration of the time limited in this act for granting certificates.

SEC. 6. That to entitle any colonist to the benefits of this act, such colonist shall take the following oath; "*I, (A. B.) do solemnly swear that I was introduced into Texas by the German emigration company in virtue of the colonization contract of Fisher and Miller with the President of the late Republic of Texas, and before the first day of September, A. D. 1847;*" and shall also prove the facts in said affidavit by at least two disinterested witnesses; and in case the applicants be heirs or administrators, they shall not be required to take the aforesaid affidavit, but shall be obliged to prove by two witnesses that the colonist whom they represent had emigrated to Texas in manner and within the time set forth in the foregoing affidavit.

SEC. 7. That the colonist, their heirs or administrators, are hereby allowed one year from the first day of May next, and no longer, in which to obtain their certificates in accordance with this act.

SEC. 8. That the Commissioner appointed by virtue of this act, before he enters on the duties of his office shall give bond in the sum of twenty thousand dollars with security to be approved by the District Judge of the second Judicial District; which bond shall be drawn in favor of the Governor of the State and his successors in office, and shall be conditioned that the Commissioner shall faithfully and impartially discharge the duties imposed on him by this act; and shall also take an affidavit faithfully and impartially to discharge the duties which this act imposes on him, to the best of his skill and ability; which affidavit shall be endorsed on the said bond, and with the same shall be deposited in the office of the Secretary of State.

SEC. 9. That certificates issued in conformity with this act, and locations made in virtue of the same, shall be subject to the inspection and approval of the Attorney General, and shall have no force in law unless by him approved.

SEC. 10. That the Commissioner appointed in compliance with this act, shall receive two dollars for each certificate is-

med, to be paid by the party receiving the same; and said Commissioner shall do and transact the business and duties required of him at the town of Fredericksberg in the county of Gillespie, and in the City of New Braunfels, Comal County.

SEC. 11. That this act take effect and be in force from and after the first day of May, A. D. 1848.  
 Passed, March 20, 1848.

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## CHAPTER 119.

### An Act to create the County of Van Zandt.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all the territory heretofore comprised within the County of Henderson, and not now comprised within the limits of the counties of Henderson and Kaufman, be, and the same is hereby constituted and made a new county to be called Van Zandt.

SEC. 2. *Be it further enacted*, That said county shall be organized in conformity with an act for the organization of the several counties in the State, approved 11th April, A. D. 1846.

SEC. 3. *Be it further enacted*, That Jordan's Saline in said county shall be the county seat of said county, until otherwise provided for by law; and that this act take effect from and after its passage.

Approved, March 20, 1848.

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## CHAPTER 120.

Joint Resolution, Whereas it is believed that John C. Watrous, Judge of the United States District Court for the District of Texas, has while seeking that important position, given legal opinions in causes and questions to be litigated hereafter, in which the interests of individuals and of the

State, are immensely involved; whereby it is believed he has disqualified the Court in which he presides, from trying such questions and causes; thereby rendering it necessary, to transfer an indefinite and unknown number of suits hereafter to be commenced, to Courts out of the State for trial; and whereas it is also believed that the said John C. Watrous, has while in office aided and assisted certain individuals, if not directly interested himself, in an attempt to fasten upon this State, one of the most stupenduous frauds ever practiced upon any country or any people; the effect of which would be to rob Texas, of millions of acres of her public domain, her only hope or resource, for the payment of her public debt; and whereas, his conduct in Court and elsewhere, in derogation of his duty as a Judge, has been marked by such prejudice and injustice toward the rights of the State, and divers of its citizens, as to show that he does not deserve the high station he occupies; Therefore,

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That the said John C. Watrous be and he is hereby requested, in behalf of the people of the State, to resign his office of Judge of said United States Court for the District of Texas.

SEC. 2. *Be it further resolved*, That the Governor, forward the said J. C. Watrous, under the seal of the State, a copy of the foregoing preamble and resolution, also a copy to each of our Senators and Representatives in the Congress of the United States.

Approved, March 20, 1848,

## CHAPTER 121.

Joint Resolution appropriating one hundred dollars for the purpose of procuring a map of Shelby County.

*Be it resolved by the Legislature of the State of Texas*, That the sum of one hundred dollars, be, and the same is hereby appropriated for the purpose of procuring a map of



Shelby county, and that this Joint Resolution take effect from and after its passage.

Approved, March 20, 1848.

## CHAPTER 122.

### An Act to raise a revenue by taxation.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That there shall be levied and collected, for the use of the State, a direct ad valorem tax of twenty cents upon each hundred dollars value of all property, real and personal, (except such property as may be) excepted by law from taxation.

SEC. 2. That there shall be assessed and collected of every free male person between the ages of twenty one and fifty five years, citizens of this State, (idiots and persons *non compos mentis* excepted) a poll tax of one dollar each.

SEC. 3. That there shall be assessed and collected of each person, firm or public corporation, having money loaned at interest, a tax at the rate of twenty cents on each hundred dollars so loaned, and any person, firm or public corporation having money loaned at interest who shall fail or refuse to give in the same for taxation, shall upon conviction before any Court having competent jurisdiction, forfeit the interest on such money loaned at interest, and not given in for taxation to the use of the informer; that each and every person or firm occupied in the sale of goods, wares, merchandize, vinous and spiritous liquors when sold in quantities of a quart or more, shall pay a tax of twenty cents on each hundred dollars value of such goods, wares and merchandize, spirituous and vinous liquors purchased for sale, or received for sale as agent or auctioneer by such person or firm, and it shall be the duty of each assessor and collector in this State, once in every three months, or oftener, to call upon such person or firm, so occupied in his county for an account of such purchases under oath, and any person when so called on who shall fail or refuse to furnish such assessor and collector with an account of all such purchases as have been made by him during the term for which the assess-

ment is to be made, shall be liable to a penalty of fifty dollars for each failure or neglect, to be recovered on the information of the assessor and collector, before any Justice of the Peace of the proper county, by a suit in favor of the State, and the specific tax levied by virtue of this section shall not be construed to exempt the said goods, wares and merchandize from the ad valorem tax levied by this act.

SEC. 4. That there shall be assessed and collected of each person the proprietor of a company, within the limits of this State pursuing the occupation of exhibiting, or causing to be exhibited for pay or emolument, any theatre or theatrical amusements, an annual direct tax of one hundred dollars for each and every such establishment; of each and every person pursuing the occupation of exhibiting any museum, menagerie, wax works, feats of activity, slight of hand, or any diversion of this character under any name whatever, an annual direct tax of twenty five dollars, in each and every county in which the same may be exhibited.

SEC. 5. That there shall be assessed and collected of each and every person, or firm occupied in the retail of vinous or spirituous liquors of any kind in quantities less than one quart, an annual direct tax of fifty dollars for each and every such establishment; of each and every person pursuing the occupation of a hawker and pedlar an annual direct tax of ten dollars in each and every county in which they may pursue such occupation.

SEC. 6. That there shall be assessed and collected of each and every person, or firm, keeping a billiard table, an annual direct tax of fifty dollars, for each and every table so kept; of each and every person, or firm, keeping a nine, or ten pin alley, an annual direct tax of twenty dollars, for each and every alley; of each and every person, or firm, occupied in keeping any cook shop, restuarat, or eating house for pay or emolument, an annual direct tax of fifteen dollars, for each and every such establishment; of each and every person, or firm, occupied in keeping a race track, an annual direct tax of twenty five dollars; of each and every person, or firm, pursuing the occupation of a real estate broker, ship broker, money broker, and merchandize, and cotton broker, or any commission business, an annual direct tax of twenty dollars, for each and every such establishment; and of each and every person or firm, occupied

in the business of auctioneering an annual direct tax of twenty five dollars.

SEC. 7. That the taxes assessed in pursuance of this act, shall be a lien upon all property, real and personal, belonging to the person or persons so assessed, and upon whom the same be imposed; and upon all property assessed where the owner is unknown, and shall continue to bind such property, and be preferred to all other incumbrances, until the taxes of such person or persons shall have been fully settled and paid.

SEC. 8. That an act entitled an act to raise a revenue by direct taxation, approved 28th April, A. D. 1845, and all other laws and parts of laws conflicting with this act (except as to the release of taxes heretofore assessed and now due) be, and the same are hereby repealed, and that this act be in force and take effect from and after its passage.

Approved, March 20, 1848.

## CHAPTER 123.

An Act to give to each Corporate County in this State, its own County Surveyor, Map and Records.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That from and after the passage of this act, the County Court of each county in this State may, if the Court deem it expedient, employ a competent Surveyor, who, in connexion with the Surveyors to be appointed by adjoining counties or alone, shall proceed to run and plainly to mark the lines of their respective counties according to the law creating each county; and said Surveyor or Surveyors shall ascertain and note the connexion of each corner of any county so run with some known corner of a survey nearest to any corner of any county so established; *provided* that the running of all county lines under the provisions of this act shall be regulated by and done in conformity with the provisions of an act approved May 12th, A. D. 1846, "regulating the manner of running county lines;" *and further provided,* that the provisions of this act shall only extend to such new counties as have not heretofore been

entitled to a separate county Surveyors office, and to such counties as may adjoin them and be interested in the running of mutual county boundaries,

SEC. 2. *Be it further enacted*, That immediately after the completion of the survey of any county as contemplated by this act, it shall be the duty of the County Court of the county so surveyed to appoint a suitable draughtsman, who shall proceed to the office of the District Surveyor of the District from which said county may be taken, or if parts of said county be taken from different Districts, then he shall proceed to the District Surveyors office of each District from which a part of said county may have been taken, and take two correct copies of the map of said county, one of which shall be on good tracing paper, and both of which as soon as completed shall be deposited in the office of the Clerk of the County Court of the County for which said maps may have been made, with the certificate of the District Surveyor to each map if the county be wholly taken from one District, or if taken from more Districts than one, then each District Surveyor shall certify on each map that the part taken from his own District is a true and correct copy of the part of his District represented on said map, and any County Court receiving maps as provided by this act shall immediately transmit one copy of said map under the seal of the County Court to the Commissioner of the General Land office together with a properly authenticated copy of the field notes of the survey of the county boundaries.

SEC. 3. *Be it further enacted*, That it shall be the duty of the County Courts of the several counties that may avail themselves of the benefits of this act; at their first session after the receipt of this act, or as soon thereafter as they can, to appoint some competent person, whose duty it shall be, to proceed forthwith to the office or offices of the District Surveyor or Surveyors of the District or Districts in which their respective counties may be situated, and make a true and correct copy of all the records in any District Surveyor's office, of surveys of land situated in the county for which he may have been appointed to take a transcript of records: *Provided*, that after said transcript of records shall have been made out, it shall be the duty of the District Surveyor or Surveyors of the District or Districts and of the County Clerk or Clerks of the county or counties in which any of said District Surveyor's offices may be situated carefully to examine such transcript of records

and compare the same with the original records, and when found to be correct, the District Surveyor shall certify in said record book, at the foot of the last record over his own proper signature, and the Clerk of the County Court shall certify under his seal of office, that said transcript is a true and correct copy of the original records in the District Surveyor's office; *and further provided*, that said transcript of records so certified, shall answer all the purposes, and have the same force and effect in law, that the originals could have.

SEC. 4. *Be it further enacted*, That as soon as the County Court of any county entitled to the provisions of this act shall have complied with the foregoing provisions of this act, the Chief Justice of said county, shall forthwith order an election for a County Surveyor for said County by the qualified electors of the county, giving notice of thirty days of said election, and county Surveyors so elected, shall hold their offices until the next succeeding general election for county offices, and shall thereafter be elected every two years by the qualified electors of these respective counties.

SEC. 5. *Be it further enacted*, That whenever any county shall have complied with the foregoing provisions of this act, it shall be a separate Land District. and the County Surveyor authorized to be elected by this act shall be qualified and give bond in the same manner, form and amount, and shall do and perform all the duties, and be governed by the same laws that regulate the qualifications and duties of District Surveyors.

SEC. 6. *Be it further enacted*, That the transcript of records and maps, together with the examination of the same, shall be paid for by the County, for the benefit of which they are made, allowing eight cents for every hundred words in copying said records: and three dollars per day, for each day the draughtsman may be actually and necessarily engaged in copying maps, as provided in this act; and Clerks and District Surveyors for examining and certifying transcripts of records, as required by this act, shall have three dollars per day, *provided*, that the Land District composed, of the county of San Patricio and Nueces be exempted from the provisions of this act.

Approved, March 20, 1848.

## CHAPTER 124.

## An Act regulating Marks and Brands.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That every person in this State who has cattle, hogs, sheep or goats, shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the Clerk of the County Court, where such cattle, hogs, sheep or goats shall be, and no person shall use more than one brand, but may record his brand in as many counties as he may think necessary.

SEC. 2. Cattle shall be marked with the ear mark, or branded with the brand of the owner, on or before they are twelve months old; hogs, sheep and goats shall be marked with the ear mark of the owner on or before they are six months old.

SEC. 3. If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the Clerk of the County Court; and the ear mark and brand of the oldest date shall have the preference.

SEC. 4. It shall be the duty of the Clerks of the County Courts in the respective counties of this State, to keep a well bound book, in which they shall record the marks or brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded, which record shall be subject to the examination of every citizen of the county at all reasonable office hours free of charge for such examination.

SEC. 5. No brands except such as are recorded by the officers named in this act shall be recognized in law as any evidence of ownership, of the cattle, horses, or mules upon which, the same may be used.

SEC. 6. Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark which shall be recorded, the father or guardian shall be responsible for the proper use of such mark and brand of any such minor.

SEC. 7. Persons who have heretofore recorded their mark or brand, shall not be required to have the same recorded, again under this act in the same county.

Approved, March 20, 1848.

## CHAPTER 125.

## An Act regulating Estrays.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That any person who shall take up any stray work ox, horse, mare, colt, mule, jack or jenny, which shall be found on his or her plantation, or land, shall forthwith give information thereof to some Justice of the Peace, for the county, and make oath before said Justice that the same was taken up at his or her plantation, or place of residence, or his or her land adjoining the same, and that the marks or brands have not been altered, or defaced since the same was taken up; and thereupon the said Justice shall issue his summons to two disinterested householders of the neighborhood, commanding them after being duly sworn, to value and appraise the same, and certify the valuation under their hands, together with a particular description of the animals, stature, marks, brands, color and age, which certificate shall be attested by the Justice, who shall thereupon require the taker-up to enter into bond with sufficient security in double the amount of the appraisement, payable to the Judge of the County Court and his successors in office, conditioned that the taker-up shall comply with the provisions of this act; which bond and appraisement shall be transmitted by him to the Clerk of the County Court within twenty days thereafter, to be by such Clerk entered in a book to be kept for that purpose, for which the Justice and the Clerk shall each receive the sum of fifty cents to be paid by the taker-up; *Provided*, that if two or more strays of the same species are taken up by the same person at the same time, they shall be included in the same entry and one advertisement, and the Justice and the Clerk shall receive no more fees than for one such strays.

SEC. 2. *Be it further enacted,* That when any stray as aforesaid shall be found dead, or shall have escaped, the taker-up shall without delay make report thereof to the Clerk on oath, who shall make a memorandum of the same in the margin of his book where the certificate of such stray or strays were registered; and the taker-up shall not be answerable for the same, nor shall the taker-up be liable for using said stray; *Provided*, the same shall not have been abused, and should the

same be abused by such use, the owner shall be entitled to damages from the person so abusing.

SEC. 3. *Be it further enacted*, That when any stray shall be proved away, and the owner and the taker-up cannot agree as to the expenses, application may be made by either party to the next Justice of the Peace, who shall appoint two householders of the neighborhood, who shall have the privilege of appointing an umpire, and adjusting the dispute, and their award shall be final.

SEC. 4. *Be it further enacted*, That if any person shall send, or take away any stray out of the State of Texas on any pretence whatsoever, through fraud, or shall trade, swap, or sell the same under twelve months, he, she or they so offending shall forfeit and pay double the amount of the appraisement of such stray or strays, recoverable before any Court of this State having jurisdiction thereof; one half to the use of the informer, and the other half to the use of the county wherein the offence shall have been committed, and moreover, shall pay the owner the amount of the appraisement, or if no owner appear, then to the county, subject to the regulation hereinafter ordered under the sixth section of this act.

SEC. 5. *Be it further enacted*, That any person who shall take up or use a stray of whatever description, contrary to the meaning of this act, shall for every such offence, forfeit and pay one hundred dollars, recoverable with costs in any court of this State having jurisdiction thereof; one half to the use of the county, and the other half to the person suing for the same; and be answerable in a suit for damages to the party aggrieved.

SEC. 6. *Be it further enacted*, That the property of every stray, or strays, so taken up as aforesaid, twelve months after such appraisement and not proved away by the owner thereof, shall be deemed vested in the taker-up of the same; *provided*, nevertheless, that should the owner apply in eighteen months, he shall receive the full amount of such appraised stray, one half from the taker-up and the other half from the county, after paying all reasonable expenses; and *provided*, also, that the person so taking up shall account for and pay into the hands of the Clerk of the County, who shall pay over the same into the County Treasury, for county purposes, one half of the appraised value of all such strays, according to the true intent and meaning of this act, and if the taker-up shall neglect



to account with the said Clerk for the same, he, or she so failing shall forfeit and pay the appraised value of all such stray, or strays, to be recovered by action of debt before any court having cognizance thereof, and it shall be the duty of the Clerk to commence suits respectively against all delinquents for the recovery of the same, and shall be entitled to receive five per centum on all money recovered and received, and the balance the said Clerk is hereby required to pay over to the County Treasury.

SEC. 7. *Be it further enacted*, That it shall and may be lawful for the former owners of any strays at any time, on proving their property to demand and receive from the County Treasurer one half of the value of any such strays appraised and accounted for as aforesaid, deducting therefrom the Treasurers Commission of two per centum for receiving and accounting for the same.

SEC. 8. *Be it further enacted*, That the Clerk of each county of this State shall keep a book in which he shall register all certificates of strays delivered to him, and file the same in regular order. It shall be his duty to cause a copy of the certificate of appraisement and description of every horse, work ox, mare, colt, mule, jack or jenny, to be published three times in some newspaper in the county, if there be one, if none be published in the county, then in the nearest newspaper in an adjoining county. It moreover shall be the duty of the Clerk to make out a fair and correct list of all strays and affix the same at the door of the court house of their respective counties, on the first day of each term of the County and District Courts, omitting only such strays as are proved away, escaped, or dead, under the penalty of fifty dollars for such neglect or omission. The Clerk shall receive as fees of office for advertising any ox, horse, colt, mule, jack or jenny, one dollar, and in addition one dollar for printer's fees for advertising the same.

SEC. 9. *Be it further enacted*, That at any time within twelve months, it may be lawful for the owner of any stray, or strays taken up under the provisions of this act, to prove his or her property, by his or her own oath, or by the oath or affirmation of any other competent witness in the following manner, to wit: a certificate giving particular description of the animal claimed shall be made out, giving the kind, marks, brands, stature, color or age of such stray, or strays as may be; which certificate shall be sworn to and subscribed before any Justice of

the Peace, and delivered to the taker-up, to be filed in the Clerks office; and the deliverer of such certificate as before mentioned, on payment of all costs incurred from posting and keeping such stray, or strays, shall deliver up the same to the proper owner.

SEC. 10. *Be it further enacted*, That in all cases of the division of counties, the stray, or strays shall belong to the county wherein the same may be found, and shall be disposed of as other strays posted in said county.

SEC. 11. *Be it further enacted*, That any person taking up any stray cattle, hogs, sheep or goats, shall proceed in the same manner and form as in the first section of this act; and any person or persons estraying the same as provided for in this act, shall not be compelled to keep them more than six months from the date of appraisement, at the end of which time the taker-up shall be deemed the owner, and shall pay over to the County Treasurer for county purposes, one half of the appraised value of said animals so estrayed as aforesaid, provided, if the owner of the same shall appear within twelve months from the time of taking up and estraying any such animals, he shall be entitled to receive one half the appraised value of the same from the County Treasurer, and the other half from the taker-up, provided he pays the cost of estraying the same, the taker-up shall set up written advertisements, at two of the most public places in the neighborhood, describing such stray or strays to have been taken up by him.

SEC. 12. *Be it further enacted*, That it shall be unlawful for any person or persons to stray any animal or animals of the cow kind, except work oxen, unless the same shall have been on his or her plantation, or land, or stock range at least one year next previous to the time of estraying the same, provided, that no horse, mare, mule, colt, jack or jenny shall be estrayed unless the same shall have been in the range of the taker-up for at least sixty days before estraying the same, and that any person or persons on making application to a Justice of the Peace for the purpose of estraying any cattle, shall make oath that the same have been one year on his or her plantation, or land, or stock range; and that he, or she did not directly or indirectly cause the same to be driven there, and he or she has made enquiry through the neighborhood where said cattle are, and cannot learn and do not know to whom the same belongs.

SEC. 13. *Be it further enacted*, That when any person or

persons are hunting estrays in another's stock range, they shall inform the owner or stock minder of said stock their intention or object, and if any such person or persons in driving off estrays, or otherwise shall drive, or cause to be driven either directly or indirectly any of said stock or any domestic animals out of their accustomed range, except he or she be the owner thereof, or have authority from the owner or his agent, such person or persons so offending shall forfeit and pay the sum of fifty dollars, to be recovered before any court of competent jurisdiction; one half to the informant and the other half to the county where the offence was committed, and shall be further liable in a suit for damages to the party aggrieved.

SEC. 14. *Be it further enacted*, That if any person or persons shall take up an stray or estrays and use them before estraying the same, such person or persons shall forfeit and pay the sum of fifty dollars, to be recovered before any court of competent jurisdiction; one half to the informant, and the other half to the county where the offence was committed; and shall be further liable for damages to the party aggrieved.

SEC. 15. *Be it further enacted*, That all estrays shall be kept in the county where the same were estrayed, at least one year after they have been estrayed, (except sheep, goats and hogs,) and shall not be sold within that period, and any persons acting in contravention of this section of this act, shall forfeit and pay the sum of one hundred dollars, recoverable before any court of competent jurisdiction; one half to go to the informant the other half to the county where the offence was committed, and shall be further liable to the owner in a suit of damages.

SEC. 16. *Be it further enacted*, That if any person that has taken up any animals shall refuse to deliver the same up to the owner on his having complied with the requisitions of this act, as respects proving the same, such owner shall have his action therefor, and if such owner recover in such action, he shall recover double costs.

SEC. 17. *Be it further enacted*, That all laws heretofore enacted on the subject of estrays, be, and the same are hereby repealed.

Approved, March 20, 1848.

## CHAPTER 126.

An Act to define the time of holding the Courts in the ninth Judicial District.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the District Courts in the ninth Judicial District shall be held:

In the County of Houston, on the third Mondays in April and October of each year, and may continue in session three weeks.

In the County of Anderson, on the third Monday after the third Mondays in April and October of each year, and may continue in session two weeks.

In the County of Henderson, on the fourth Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Dallas, on the fifth Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Denton, on the sixth Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Grayson, on the seventh Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Collin, on the eighth Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Kaufman, on the ninth Monday after the third Mondays in April and October of each year, and may continue in session one week.

In the County of Van Zandt, on the tenth Monday after the third Mondays in April and October of each year, and may continue in session one week.

**SEC. 2.** *Be it further enacted,* That all writs and process returnable to the regular terms of the Courts of said counties, as heretofore established by law, shall be returnable at the terms herein prescribed: and all laws and parts of laws conflicting with the provisions of this act are hereby repealed: and that this act take effect and be in force from and after its passage.

Approved, March 20, 1848.

## CHAPTER 127.

An Act to organize Justices Courts, and to define the powers and jurisdiction of the same.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That there shall be elected by the qualified electors of each Justices Precinct, in the several counties of this State, on the first Monday in August, 1848, and every two years thereafter, two Justices of the Peace, who shall hold their offices for the term of two years, and until their successors shall be elected and qualified according to law, and shall be commissioned by the Governor.

SEC. 2. That before any Justice of the Peace shall enter upon the duties of his office, he shall execute a bond, with two or more good and sufficient sureties, in the sum of five hundred dollars, payable to, and approved by the Chief Justice of the county, conditioned that he shall well and truly account for, and pay over to the County Treasurer of the County, all money that may come to his hands, for the use of the county; and also that he shall well and truly account for and pay over to the Treasurer of the State, all money that may come to his hands for the use of the State; and also, that he shall well and truly account for and pay over to the person entitled to receive the same, his agent or attorney, all money that may come to his hands, in any suit or action between parties, and he shall also take the oath of office prescribed by law, before some officer authorized to administer oaths, which shall be endorsed on his bond, together with the certificate of the officer who administered the same; such bond and oath shall be returned to, and recorded in the office of the Clerk of the County Court of the County in which such justice was elected.

SEC. 3. That the bond of a Justice of the Peace may be sued upon, in the name of any party or parties injured by a breach thereof; and shall not be void on a first recovery, but may be sued upon from time to time, until the whole amount of the penalty is recovered.

SEC. 4. That whenever the bond and oath of a Justice of the Peace have been returned to, and recorded in the office of the Clerk of the County Court, such Justice may immediately enter upon the duties of his office, and his acts shall be as valid as if he had been commissioned by the Governor.

**SEC. 5.** That when any person has been elected a Justice of the Peace, and neglects to execute a bond, and take the oath of office, as prescribed by this act, within twenty days after he shall have been declared to be elected, such election shall be deemed void, and the Chief Justice of the county shall immediately order another election.

**SEC. 6.** That any Justice of the Peace who shall be guilty of any misconduct or misdemeanor in office, may be prosecuted by indictment of the Grand Jury of his county, and on conviction thereof, in the District Court, shall be removed from office, and the office shall be declared vacant; any Justice of the Peace who shall be so removed, shall be thereafter incapable of holding the office of Justice of the Peace in this State.

**SEC. 7.** That whenever there shall be a vacancy in the office of Justice of the Peace, before the expiration of two years after a regular election, by death, resignation, removal, or otherwise, the Chief Justice of the county, where such vacancy exists, shall forthwith order an election to fill such vacancy; and the person so elected, shall hold his office for the unexpired term, and until a successor shall be elected and qualified.

**SEC. 8.** That every Justice of the Peace shall keep a docket, in which he shall enter all examinations and trials for criminal offences before him, the nature of the offence, the time when the examination was had, stating whether such trial was by a jury or by himself, the verdict of the jury, if any, the judgment rendered by the Justice, and the time when it was rendered, and how the same was executed; he shall also keep a docket, in which he shall enter; first, the titles of all suits commenced before him; second, the time when the first process was issued against the defendant, when it was returnable, and the particular nature thereof; third, the time when the parties or either of them, appeared before him, either without citation, or upon the return thereof; fourth, a brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defence made by the defendant, (if any;) fifth, every adjournment stating at whose request, and at what time; sixth, the time when the trial was had, stating whether the same was by a jury, or by the Justice; seventh, the verdict of the Jury, (if any;) eighth, the judgment rendered by the Justice, and the time of rendering the same; ninth, all applications for setting aside judgments, or granting new trials, and the order of the

Justice thereon, with the date thereof; tenth, the time of issuing execution, the name of the officer to whom it was directed, and the amount of the debt, damages and costs; and when any execution is returned, he shall note such return on said docket, with the manner in which it was executed; eleventh, all stays and appeals that may be taken, and the time when taken.

SEC. 9. That if from any cause whatever, a Justice of the Peace shall vacate his office, all books and papers belonging to, or appertaining to his office, shall be delivered to the person elected, and qualified to fill such vacancy, whenever demanded by him, and upon receiving such books and papers, he shall proceed with all judgments, executions and unfinished business therein contained, in like manner, as if the same had been commenced by himself.

SEC. 10. That any person or persons, having the possession of any books or papers, belonging, or appertaining to the office of a Justice, that has become vacant, who shall neglect or refuse to deliver them to the person elected and qualified to fill such vacancy, when demanded by him, may upon the motion of any person interested in such books or papers, be attached and imprisoned, by order of any Judge of the District Court of this State, until he shall so deliver such books and papers, provided, that such motion shall be supported by affidavit, and three days previous notice thereof, shall be given to the person or persons against whom such motion is made.

SEC. 11. That whenever any Justice of the Peace, shall be elected and qualified under the provisions of this act, he shall demand of his predecessor, all books and papers that may be in his possession, belonging or appertaining to his office; and upon receiving such books and papers, said justice shall proceed, with all executions, judgments, and unfinished business, therein contained, in like manner, as if the same had been commenced before himself; and any person or persons, having the possession of any such books or papers, who shall neglect or refuse to deliver them, when so demanded, may be proceeded against in like manner, as provided for in the previous section.

SEC. 12. That all judgments and final orders, given by any Justice of the Peace, in any suit or prosecution, civil or criminal, shall be given in open court.

SEC. 13. That whenever complaint shall be made in wri-

ting, and upon oath, to any Justice of the Peace, that any one has threatened, or is about to commit an offence against the property or person of another, it shall be the duty of such Justice, to examine such complaint, and any witnesses that may be produced on oath, and reduce such examination to writing, and cause the witnesses so examined to subscribe the same.

SEC. 14. That if it shall appear on any such complaint or examination, as is provided for in the previous section, that there is reason to fear the commission of any such offence, by the person complained of, it shall be the duty of such Justice, to issue a warrant under his hand, reciting the complaint, directed to any lawful officer of the county, commanding him forthwith to apprehend and bring the person complained of before such Justice, and upon such person being brought before such Justice, he may be required to enter into a recognizance, in such sum, as the Justice shall direct, not exceeding two thousand dollars, nor less than fifty dollars, with one or more sufficient sureties, to keep the peace toward the people of this State, and particularly toward the complainant for such time as such justice shall direct, to be stated in such recognizance.

SEC. 15. That whenever any Justice of the Peace shall believe that a person is about to commit an offence against the property or person of another, he may cause such person to be arrested, and require him to enter into a recognizance, in like manner, as provided for in the previous section.

SEC. 16. That Justices of the Peace shall be conservators of the peace; within their respective counties, and whenever complaint shall be made in writing, and upon oath, to any Justice of the Peace, that an offence against the laws of this State has been committed by any person or persons, or whenever it shall come to the knowledge of any Justice of the Peace either by view or confession, that any such offence has been committed, it shall be the duty of such Justice, to issue a warrant under his hand, directed to any lawful officer of the county, commanding such officer to arrest, and bring the person or persons so complained of, or offending before him forthwith, or at a time to be named in such warrant; such warrant shall in all cases state the cause of the arrest.

SEC. 17. That when any person charged with the commission of any offence, against the laws of this state, shall be brought before any Justice of the Peace, if such offence is charged to have been committed in any other county



of this State, and if, in the opinion of such Justice, there is probably cause to believe such offence has been committed by the person charged, he shall, by his warrant, send the person so charged, before some competent officer of the county where the offence is charged to have been committed, for examination or trial; but if such offence is charged to have been committed in the county where such Justice officiates; and if the offence charged is one that such Justice has not jurisdiction finally to try, he shall proceed to take the voluntary statement of the accused in writing, if he wishes to make any such statement; and the testimony of all witnesses, for and against the accused, who shall have the privilege of interrogating all such witnesses, all of which testimony shall be taken down in writing, and signed by the witnesses at the time of the examination; if, upon such examination, it shall appear to the Justice that no offence has been committed, or that there is no probable cause for charging the accused therewith, the Justice shall discharge him; but if it shall appear that an offence has been committed, and that there is probable cause to believe the accused guilty thereof, if such offence is bailable, and the accused offer sufficient bail, a recognizance shall be taken from him, with two or more good and sufficient sureties, to be approved of by the officer taking the same, in such sum as the Justice may direct, not less than one hundred dollars; conditioned, that the accused shall appear and answer the charge against him before the court of the county where the offence is cognizable, on the first day of the next term thereof, and not depart the court, without leave thereof; and thereupon the accused shall be discharged; but if the offence is not bailable, or sufficient bail be not offered, the accused shall be committed to the Jail of the county, where he is to be tried, there to remain until he shall be discharged by due course of law.

SEC. 18. That in all cases where a person has been committed to jail, or required to enter into a recognizance, under the provisions of the next preceding section of this act, the justice may, if he shall deem it necessary, bind all material witnesses against the accused, to appear and testify before the court of the county, where the offence is cognizable, on the first day of the next term thereof, and not depart said court without leave: such recognizance may be taken, with or without security as the justice shall direct.

**SEC. 19.** That in all cases where a person shall be required by any Justice of the Peace, under the provisions of this act, to enter into a recognizance, if he shall fail so to do, such Justice shall commit him to the County Jail, until he shall enter into the same in all such cases the warrant of commitment shall specify the cause of commitment, and the amount of the recognizance required, and the person so committed, may at any time be discharged by entering into a recognizance as required by the Justice, to be approved by the Sheriff of the county.

**SEC. 20.** That if any person charged with an offence against the laws of this State, shall remove or escape from the county where the offence was committed into another county, it shall be the duty of any Justice of the county where such offender may be, to endorse any warrant that may have been issued for the arrest of such offender, by any Justice of the Peace of any other county; which endorsement shall be sufficient authority for the arrest of the accused, within the jurisdiction of such Justice; and such offender shall be carried to the county where the offence was committed for examination or trial.

**SEC. 21.** That all recognizances taken under the provisions of this act, shall be made payable to the State of Texas; and all commitments under the same, shall be dated and signed by the Justice making them, and shall specify the cause for such commitment.

**SEC. 22.** That whenever a recognizance shall be taken by any Justice of the Peace, under the provisions of this act, if the same shall be for an offence which such Justice has not jurisdiction to try finally, or for an amount exceeding one hundred dollars, such Justice shall transmit the same to the court of the county which has jurisdiction over such offence and such recognizance, on or before the first day of the term of such court next to be held, after the taking thereof; and all examinations, testimony of witnesses, and voluntary statements of persons accused taken in such cases, shall be certified, and in like manner be returned to such term; and any Sheriff who shall take a recognizance under the provisions of this act, shall return the same in like manner, to the proper court, and may be proceeded against in like manner for not making such return.

**SEC. 23.** That if any Justice of the Peace, shall neglect or refuse to certify, and make return of any such recognizance or examination, so taken by him, to the proper court, he shall be

liable to be proceeded against in said court by attachment, as for a contempt of said court.

SEC. 24. That upon complaint being made in writing under oath, before any Justice of the Peace, that any personal property has been embezzled or stolen, and that the complainant suspects that such property is concealed in any particular house or place, if such Justice shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property; such warrant shall be directed to the Sheriff, or any lawful officer of the county, and shall command him to search the place where such property is suspected to be concealed, which place shall be designated, and the property particularly described, and bring such property before the Justice issuing the warrant.

SEC. 25. That Justices of the Peace shall have and exercise jurisdiction to try all breaches of the peace, riots, and affrays, and assaults and batteries committed in their respective counties, provided, that they shall not have jurisdiction finally to try any such offence, where any deadly weapon was used or attempted to be used; nor where the fine or penalty shall exceed one hundred dollars; they shall also have jurisdiction to try all misdemeanors where the fine, forfeiture, or penalty shall not exceed one hundred dollars; they shall also have jurisdiction to try all suits and actions in behalf of the State or any county thereof, or any individual to recover penalties, fines and forfeitures, where such penalty, fine or forfeiture, shall not exceed one hundred dollars; they shall also have jurisdiction to try all suits in behalf of the State, or any county thereof for any violation of the revenue law of this State, where the matter in controversy shall not exceed one hundred dollars. They shall also have jurisdiction in all suits and actions for the recovery of money on any account, bill, bond, note, or other instrument of writing; of all suits and actions for the recovery of specific articles, or the value thereof; of all suits and actions for torts, trespasses, and other injuries to person or property, where the amount claimed, or the value of the articles or the damages sought to be recovered, shall not exceed one hundred dollars, exclusive of interest and cost. They shall also have and exercise jurisdiction over all other matters not herein enumerated, that may be cognizable before a Justice of the Peace, under the laws of this State.

SEC. 26. That all examinations and trials, before Justices

of the Peace, for offences against the laws of this State, shall be had, as soon as possible, after the person charged is brought before the Justice, provided, however, that such examinations and trials may be adjourned for a reasonable time, to procure testimony, and such trials may be adjourned for a reasonable time to procure a Jury, when the accused shall demand one.

SEC. 27. That when any person charged with an offence against the laws of this State, shall be brought before a Justice of the Peace, if such offence is one that such Justice has jurisdiction finally to try, and the accused shall not demand a jury, such Justice shall proceed to hear the evidence, and if in his opinion, the accused is guilty, he shall assess the fine, penalty, forfeiture or imprisonment for such offence, and render judgment therefor; but if the accused shall demand a jury, then they shall be sworn to try the cause; and if they return a verdict against the accused they shall also assess the fine, forfeiture, penalty, or imprisonment to be imposed, unless the same is specifically imposed by law; and the Justice shall render judgment upon such verdict; but if the fine, forfeiture, penalty, or imprisonment for such offence is specifically imposed by law, then upon the return of a verdict against the accused, the Justice shall render judgment thereon for such fine, forfeiture, penalty or imprisonment, as may be so imposed.

SEC. 28. That in all cases where a judgment shall be rendered by a Justice of the Peace, for any fine, forfeiture or penalty in money, for an offence against the laws of this State; such Justice shall have power to commit the offender to the county jail, until such fine, forfeiture or penalty and costs shall be paid; or he may issue execution therefor, as in civil suits, and whenever a judgment shall be rendered by a Justice of the Peace condemning any person to imprisonment, for any offence against the laws of this State, such Justice shall immediately issue his warrant for the commitment of such offender to the county jail, for the term of imprisonment, specified in such judgment.

SEC. 29. That whenever a Justice of the Peace shall render a judgment for a fine, penalty, forfeiture or imprisonment, for any offence against the laws of this State, that he has jurisdiction finally to try, he shall certify the fact to the next term of the District Court of his county, which certificate shall be a bar to any further prosecution, for the same offence.

SEC. 30. That no person shall be sued before any Justice of

the Peace, except in the precinct where such person resides, or in the precinct where the cause of action accrued, if in the same county; provided, however, that if there be no Justice of the Peace, in the precinct where the defendant resides, then such defendant may be sued, in the nearest precinct, where there is a Justice; provided, also, that where a defendant has no fixed place of board or residence, he may be sued before any Justice of the Peace in the county; and provided, also, that when a defendant resides in an incorporated city or town, then he may be sued before any Justice of the Peace, within the limits of the incorporation. In all cases the residence of a married man shall be deemed to be where his family resides, and that of a single man where he boards.

SEC. 31. That all process from a Justice of the Peace, except in criminal cases, shall be under the hand of such Justice, directed to some lawful officer, whose duty it shall be to execute and return the same; all such process shall be returnable, except in cases where it is otherwise provided for by law, to some regular term of such Justices Court, and shall be served by leaving a copy thereof, with the defendant, at least five days before the return day, exclusive of the day of service and return day.

SEC. 32. That whenever in any civil suit before a Justice of the Peace, the plaintiff, his agent or attorney, shall make oath in writing, before such Justice of the Peace, that the defendant is absent from this State, or that he is a transient person, so that the ordinary process of law cannot be served upon him, such Justice shall issue a citation, directed to some lawful officer commanding him to cite the defendant to appear at some regular term of his Court, to answer the plaintiff's complaint, stating the nature and amount thereof; such citation shall be returnable at some regular term of such Justice's Court, and shall be published in some newspaper printed in the county, if there be one, for at least three successive weeks before the return day; if there be no newspaper printed in the county, then it shall be published in like manner, in some newspaper printed in the nearest county where there is one.

SEC. 33. That any person may appear before any Justice of the Peace and confess a judgment, for any amount within the jurisdiction of a Justice of the Peace, without the issuance of any citation; and all such confessions of judgment shall be recorded, in like manner as other judgments.

**SEC. 34.** That when a defendant, who has been served with a citation, from a Justice of the Peace, according to law, shall neglect to appear, at or before two o'clock, P. M. of the return day of the citation, or at, or before the same hour of any day, to which the cause may have been continued, the Justice shall proceed in the following manner: 1st. If the plaintiff's cause of action is liquidated, and proved by any instrument in writing, purporting to have been executed by the defendant, the Justice shall, whether the plaintiff appear or not, after allowing the proper credits for all payments endorsed on such instrument in writing, render judgment by default, against the defendant, for the amount which shall appear by such instrument in writing, to be due to the plaintiff, together with the costs of suit. 2nd. If the plaintiff's cause of action is not liquidated, and the plaintiff appear in person, or by agent or attorney, the Justice shall proceed to hear his allegations and proofs, and shall determine the cause, as shall appear from the testimony to be right, and if it shall appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant, for such amount as the testimony shows the plaintiff to be entitled to, with costs; but if it do not appear, that the plaintiff ought to recover, judgment shall be given for the defendant, against the plaintiff for costs. 3rd. If the plaintiff fail to appear, at or before 2 o'clock, P. M., of the return day of the citation, or at, or before the same hour of any day, to which the cause may have been continued, except in the case herein before provided, the Justice shall render judgment of non suit, against the plaintiff with costs.

**SEC. 35.** That every Justice of the Peace shall have power, upon good cause shown, supported by affidavit, to set aside a judgment by default, or of non suit, at any time within ten days after the same was rendered, provided, that one day's notice of such application, shall be given to the opposite party, his agent or attorney, by the party applying, and in such cases the suit shall be continued to the next term of such Justice's Court.

**SEC. 36.** That when both parties in any suit, before a Justice of the Peace, appear in person, or by agent or attorney at the time appointed for the trial thereof, or at the time, to which it may have been continued, if the amount in controversy shall not exceed ten dollars, or if the amount in controversy shall

exceed ten dollars, and neither party shall make application to have the cause tried by a Jury, the Justice shall proceed to hear the allegations and proofs of the parties, and the defendant upon giving notice thereof, to the plaintiff before the trial commences, shall be allowed to present and prove any claim or demand, not exceeding one hundred dollars, exclusive of interest against the plaintiff, that is similar in its character, to the claim or demand of the plaintiff, and the suit shall be determined by the Justice as from the testimony shall seem to be right: If it shall appear from the testimony, that the plaintiff is entitled to recover, judgment shall be entered in his favor, for such amount as shall appear, to be due him, with costs; but if it shall appear from the testimony, that the defendant is entitled to recover, then judgment shall be entered in his favor, for such amount as shall appear to be due him, (if any) with costs: If the amount in controversy shall exceed ten dollars, and either party shall make application to have the case tried by a Jury, then the same shall be so tried, in like manner as herein before provided; and upon the return of the verdict of the Jury, the Justice shall enter judgment thereon, with costs, *provided*, however, that whenever it shall appear on any such trial, that the defendant's claim or demand, was acquired after the commencement of the plaintiff's suit, the defendant shall be liable for all the costs.

SEC. 37. That in all examinations and trials, for offences against the laws of this State, before any Justice of the Peace, it shall be the duty of such Justice, on the application of any party thereto, to issue subpoenas for witnesses, which subpoenas, may be directed to any officer authorized to execute and return process, in any county of this State, where any such witness resides, and in all suits before a Justice of the Peace, it shall be his duty, on the application of either party, to issue subpoenas for witnesses residing in the county, which subpoenas, may be directed to any lawful officer of the county; and all such subpoenas shall be executed by the officer to whom they may be directed, by reading the same to the witness, or leaving a copy thereof, at his usual place of abode, and shall be returned on or before the time when the witness is required to attend.

SEC. 38. That Justices of the Peace, shall have power to enforce the attendance of witnesses and to compel them to

give evidence in their County, by attachment and imprisonment.

SEC. 39. That on the trial of any civil suit, before a Justice of the Peace, if either party shall make oath, that he knows of no witness, by whom he can prove a fact, that is material to his claim or defence, except himself, the party making such oath, shall be examined touching such fact, and either party to any such suit, may cause the other party, to be subpoenaed, and examined as a witness.

SEC. 40. That upon all trials by a Jury before a Justice of the Peace, if any exceptions are taken, to any deposition or evidence, the same shall be decided by the Justice.

SEC. 41. That all witnesses who are subpoenaed to attend a Justice's Court, shall be entitled to receive one dollar per day, for each day's attendance, which if claimed by the witness, at the time of trial, shall be taxed in the bill of costs, against the party cast in the suit.

SEC. 42. That whenever, in any civil suit, before any Justice of the Peace, the evidence of a female is required, or the evidence of any witness residing in the County, who is unable by reason of age, infirmities or sickness, to attend the Court, or the evidence of a witness residing out of the county, the party interested, may take the deposition of any such witness, by filing with the Justice, before whom such suit is pending, interrogatories to such witness, and serving a copy of the same on the opposite party, his agent or attorney, with a notice that he intends to apply for a commission to take the answers of the witness, to such interrogatories; such notice and copy may be served by any lawful officer of the county, or by any other person; but when served by any other person, than an officer, an affidavit shall be endorsed on or annexed to such notice, by the person serving the same, stating the fact of the service of such notice, and copy of interrogatories, which affidavit, unless disproved, shall be evidence of such service, and the opposite party may file cross interrogatories with the Justice at any time before the Commission issues.

SEC. 43. That at the expiration of five days, from the service of any such notice, and interrogatories, on the application of the party who filed the same, his agent or attorney, it shall be the duty of the Justice to issue a commission, with a copy of the interrogatories, and cross interrogatories if any have been filed, directed to some Chief Justice, Notary Public, or Clerk



of the District or County Court of the County, where such witness resides, requiring such Chief Justice, Notary Public, or Clerk, to take the answers of such witness to the interrogatories, and cross interrogatories, that accompany such commission, to cause the witness to be sworn to his answers, and to subscribe them; and every Chief Justice, Notary Public, or Clerk of the District or County Court, to whom any such commissions may be directed, shall execute the same according to the directions therein contained, and for that purpose, he shall have like powers as Chief Justices, Notaries Public, and Clerks of the District Court have, to execute commissions to take depositions, when issued from the District Court, he shall certify under his hand and official seal, the manner in which he has executed such commission, and shall seal up such certificate and answer, with the commission and interrogatories, write his name across the seal of the envelope, direct the same to the Justice from whom the Commission issued, and forward it, either by mail, or private conveyance; if sent by mail he shall cause the Post master or his deputy mailing the same to endorse thereon, that he received it from the hands of the officer who took such answers; if sent by private hand, the person delivering the same to the Justice, shall make affidavit in writing, before such Justice, that he received the package, from the hands of the officer, who took such answers, and that it has undergone no change since.

Sec. 44. That all evidence, so taken and returned, to any Justice's Court, may be read in evidence on the trial of the suit in which it was taken, and shall have the same force and effect, as if the witness were examined in open Court, *provided*, the answers are responsive to the interrogatories, and, *provided*, also, that the interrogatories and answers shall be subject to all legal exceptions; but when such depositions are filed with the Justice, before the trial commences, no exceptions shall be heard, as to the manner of taking and returning such depositions, unless they are taken before the trial commences.

Sec. 45. That all the rules of evidence prescribed for the government of District Courts, where the same do not conflict with the provisions of this act, shall govern the proceedings in the Justices Courts, so far as the same are applicable.

Sec. 46. That any Justice of the Peace, before whom any suit or proceeding is pending, may, for good cause shown, by either party, and supported by affidavit, continue the same, to

the next term of his Court; and if such cause or proceeding is such as can be tried by such Justice, at any other time, than at a regular term, he shall have the like power to continue the same for a reasonable time.

SEC. 47. That any Justice may, for good cause shown, supported by affidavit in writing, grant a new trial in any civil suit tried before him, whenever he shall consider that justice has not been done in the trial of such case: *Provided, however,* That all applications for a new trial shall be made within ten days after the rendition of judgment, and one day's notice of the application shall be given to the opposite party, his agent or attorney: *Provided, also,* That not more than one new trial shall be granted to either party; and in all cases where a new trial shall be granted, the cause shall be continued to the next term of the court.

SEC. 48. That in all proceedings before a Justice of the Peace, in which either party may be entitled to a Jury, and shall make application for one, such Jury shall be composed of six men, and the Justice shall forthwith issue a writ, directed to some lawful officer of the County, commanding him to summon forthwith six disinterested freeholders, or householders, to serve as a Jury; and if any person so summoned shall fail or refuse to attend, he may be fined by the Justice, three dollars, for the use of the County, for such failure or neglect, unless he shall show to such Justice good cause for such failure or neglect, after being cited so to do. In all trials for criminal offences, either the person prosecuting, or the accused, may challenge two of such Jurors without assigning any cause therefor; and in all trials, whether civil or criminal, either party may challenge any number of Jurors for cause, which cause shall be judged of by the Justice. If, from challenges, or any other cause, a sufficient number of the Jury do not attend, the Justice shall order some lawful officer to summon a sufficient number of qualified Jurors to make up the Jury. When a Jury is formed, the Justice shall administer to them an oath or affirmation, in form as follows: "*You and each of you do solemnly swear, or affirm, (as the case may be,) that you will well and truly try the cause about to be submitted to you, and a true verdict give therein according to the evidence, so help you God.*"

SEC. 49. That whenever a Jury has been formed in a Justice's Court, the same Jury may be called on to try all causes before such Justice, in which a Jury is required, on the same

day, without the necessity of a new writ in each case; *Provided, however,* that Juries shall be sworn for each cause.

Sec. 50. That in all cases before Justices of the Peace, other than prosecutions for offences against the laws of this State, the party applying for a Jury, shall, before the trial commences, pay a Jury fee of three dollars, which shall be equally divided between the Jurors trying the cause; and if the party paying such fee, shall recover judgment, the Jury fee shall be taxed in the bill of costs, and when collected, shall be refunded to him; and in all trials before a Justice of the Peace, which shall be tried by a Jury when the Jury fee is not required to be paid before the trial commences, a like Jury fee shall be taxed in the bill of costs, and when collected shall be equally divided between the Jurors who tried the same.

Sec. 51. That every person who shall have a cause of action against another, within the jurisdiction of a Justice of the Peace, who shall make oath in writing before such Justice, that he is too poor to pay the fees of such action, shall be entitled to all process necessary for the trial of such action, and to have a trial thereof, free of costs.

Sec. 52. That a Justice of the Peace may grant a stay of execution on any judgment for money, rendered by himself in a civil suit, for three months; *Provided,* the person against whom such judgment was rendered, shall with one or more good and sufficient sureties, to be approved by such Justice, appear before him and acknowledge themselves, and each of them, bound to the successful party in such sum as shall secure the amount of the judgment, interest, and costs; which acknowledgment shall be entered by the Justice on his docket, and shall have the force and effect of a judgment against the persons making the acknowledgment, upon which execution shall issue for the amount of the original judgment, interest and costs, in case the same shall not be paid on or before the expiration of such stay; *Provided, however,* that no such stay shall be granted, unless the same is applied for within ten days after the entry of the original judgment.

Sec. 53. That any party, his agent or attorney, may appeal from any final judgment rendered by a Justice of the Peace, to the District Court of the county; *Provided,* he shall within ten days after the entry of such judgment, file with such Justice, a bond with one or more good and sufficient sureties, in a sum equal at least to double the amount of such judgment, interest

and cost, payable to the plaintiff, conditioned, that the party appealing, shall prosecute his appeal to effect, or shall pay and satisfy the judgment or decree that may be made or rendered by the District Court against the obligors in such bonds,

SEC. 54. That in all cases where an appeal shall be taken from a Justice's Court to the District Court, it shall be the duty of the Justice from whose judgment such appeal was taken, immediately to make out a transcript of his entries made on his docket in such case, and file the same with the original papers of the cause with the clerk of the District Court, on or before the first day of the term of said Court, next after such appeal was taken; but if there is not time for such transcript and papers to be filed at such first term, then they shall be so filed at the next succeeding term of said Court.

SEC. 55. That in all cases before a Justice of the Peace, other than prosecutions for offences against the laws of this State, where a party against whom a judgment for money has been rendered, shall not give notice of appeal at the time of trial, or shall not obtain a new trial, or such judgment shall not be set aside, or a stay shall not be taken before the expiration of the term of the Court at which such judgment was rendered, the Justice shall on the second day after the expiration of the term of the Court, issue an execution against the estate of the defendant; *Provided, however,* that when an appeal shall be taken and bond given, or where a new trial shall be granted in the cause, or where such judgment shall be set aside, or where a stay shall be taken at any time within ten days after such judgment was rendered, any such execution shall be superceded and quashed, and if notice of appeal is given at the time of trial, but no bond is filed within ten days thereafter, then execution shall issue in like manner.

SEC. 56. That all executions issued by a Justice of the Peace, shall be directed to some lawful officer of the State, and shall be returnable to his Court in sixty days. It shall be the duty of the officer, to whom any such execution is directed, to execute and return the same, on or before the return day thereof, and all the provisions of the laws regulating executions from the District Courts, where the same are not inconsistent with the provisions of this act, shall apply to and govern executions from Justices of the Peace, so far as the same are applicable.

SEC. 57. That in cases of emergency, any Justice of the

Peace may depute any person of good character, to execute any process, civil or criminal: *Provided*, That, in every such case, the Justice shall certify on the back of such process, that the person is so deputed by him; and the person so deputed, shall take and subscribe an oath, that he will execute such process according to law, which oath, with the certificate of the Justice, that it was administered, shall be endorsed on, or annexed to such process.

SEC. 58. That Justices of the Peace shall have power to administer oaths of office in all cases, and also all other oaths or affirmations, and to give certificates thereof.

SEC. 59. That all fines, forfeitures, and penalties for offences against the laws of this State, that may be collected under the provisions of this or any other law regulating proceedings in Justices Court, shall be paid into the County Treasury, for the use of the State or County, as the case may be, on or before the first day of the term of the District Court for the County, next after the same may have been collected; and if any Justice, or other officer, shall fail so to pay any such fine, penalty or forfeiture, on the day aforesaid, the County Treasurer may recover judgment against such Justice or other officer, and the sureties on his bond, for all such fines, penalties and forfeitures, with damages on the amount thereof, at the rate of *five per cent. per month*, from the time they were so collected, by motion before said District Court, three days notice of such motion being first given to such Justice or other officer and his sureties.

SEC. 60. That no suit shall be brought before any Justice of the Peace where he may be interested, or where he may be related to either the plaintiff or defendant, within the third degree of consanguinity or affinity; but in all such cases, suit shall be brought before the nearest Justice, not so interested or related.

SEC. 61. That in all cases where a suit shall be brought before a Justice of the Peace for the recovery of specific articles, on the trial thereof, the Jury or Justice, as the case may be, shall, if they find for the plaintiff, assess the value of such articles separately; and if the plaintiff recover, judgment shall be rendered for the specific article or articles, if to be had: but if not, then for their value, and the Justice shall issue thereon, his writ directed to some lawful officer, commanding him to put the plaintiff in possession of the article or articles so recovered, if to be found: but if not, then to proceed and make the value of such article or

articles, with the legal interest from the date of judgment, and costs, as under execution; and every Justice shall, from time to time, when required by a party having a judgment in his court, issue such executions, or other writs, as may be necessary to enforce such judgment, until the same shall have been satisfied.

SEC. 62. That every Justice of the Peace, upon complaint on oath, and in writing, charging any person with an offence against the laws of the United States, shall have power to issue his warrant for the arrest of the accused; and if, upon an examination, to be conducted in the manner herein provided for examinations for offences, such Justice shall think there is probable cause, to believe the accused guilty; if the offence is bailable, he may take his recognizance to appear before the Court that has cognizance of the offence; but if not bailable, he shall commit him to jail, and certify the fact to said Court, at its next term.

SEC. 63. That in all trials before Justices of the Peace, for breaches of the peace, riots and affrays, and assaults and batteries, if the accused shall not be convicted, the person filing the complaint shall be adjudged to pay the costs; and upon all complaints for offences against the laws of this State, or of the United States, before a Justice of the Peace, if he shall be of opinion that there was no good foundation for such complaint, he shall give judgment for cost against the complainant.

SEC. 64. That each Justice of the Peace shall hold a term of his Court once in each month, and may transact such business out of said term as is authorized by law; and the Justices of the Peace of each Precinct in the State, shall be divided into two classes by the Chief Justices of their respective counties, who shall cause a record of such division to be made in the County Court, and those Justices belonging to the first class, shall hold their Court on the first Saturday of each month; and those of the second class, shall hold their court on the last Saturday of each month.

SEC. 65. That no justice shall render a judgment upon any attachment or sequestration, unless the defendant shall have been cited, either personally or by publication.

SEC. 66. That the Justice of the Peace, when he issues a citation in a civil suit, shall insert in the citation, the cause of action, or endorse it thereon.

SEC. 67. That no party, after taking a stay, or an appeal in a

Justice's Court, shall be entitled to a writ of certiorari, to remove the cause to the District Court; and no writ of certiorari shall be granted by a Judge of the District Court, to remove a cause from a Justice's Court, unless the party applying for the same shall make an affidavit in writing, setting fourth sufficient cause to entitle him to such writ; nor shall any such writ be granted after ninety days from the decision of the cause by the Justice of the Peace; and no such writ shall be issued unless the party applying shall first give bond, with two or more sufficient sureties, payable to the adverse party, for a sum equal to, at least double the value of the amount in controversy, conditioned in the same manner as in appeals to the District Court; which bond shall be approved by the Clerk of the District Court, and together with the affidavit, shall be filed in his office; and upon service of such certiorari being made on the Justice of the Peace, he shall make out a certified copy of the entries in the cause, on his docket, and transmit the same, with the original papers, to the District Court, on or before the first day of the term next thereafter; and the case may be reviewed and tried *de novo*, and if the judgment be affirmed, ten per cent. damages shall be added and judgment rendered against all the obligors in such bond.

SEC. 68. • That this act shall take effect and be in force on and after the first Monday in August, 1848; and on and after that day, "An act to organize Justices Courts, and to define the powers and jurisdiction of the same," passed, 11th May, A. D. 1846, shall be, and is hereby, repealed.

Approved, March 20, 1848.

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## CHAPTER 128.

An Act to provide for fixing the seat of Justice of the County of Dallas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas.* That the second Saturday of May, one thousand eight hundred and forty eight, be fixed as the day for holding an election in the County of Dallas for the selection of a suitable place for the permanent location of the County seat of Justice of said

county; and it shall be the duty of the Chief Justice of said county to give public notice of the same in writing, to be posted up at the different precincts, immediately after the passage of this act, and to issue writs of election to the different precincts, at least ten days prior to said election.

SEC. 2. *Be it further enacted*, That it shall be the duty of said Chief Justice to receive and make public in writing posted up at the different precincts such propositions as may be offered by the citizens of the county, as inducements in favor of the selection of places recommended as suitable locations, for the County seat of said county.

SEC. 3. *Be it further enacted*, That the propositions submitted to the Chief Justice in compliance with the second section of this act, shall be in the shape of penal bonds, and shall be collected at the suit of said Chief Justice or his successor in office, in the District Court, for the use of the county, and the proceeds applied to the erection of county buildings.

SEC. 4. *Be it further enacted*, That the election for said county seat shall be conducted in conformity with the existing laws regulating elections at the time thereof, and the returns made to the Chief Justice, in ten days after the election, who shall declare the place receiving the highest number of votes to be the legal seat of Justice of said county, provided, any one place shall have received a majority of all the votes polled at said election; but in the event that no one place shall have received a majority as aforesaid, then and in that case, it shall be the duty of the Chief Justice, to proceed to order another election after giving notice as in the first instance, putting in nomination the two places that have received the greatest number of votes, which shall be conducted and returns made as heretofore provided, and the place then receiving the highest number of votes, shall be declared the County seat of Justice, provided it shall not be more than five miles from the centre of said county.

SEC. 5. *Be it further enacted*, That William Jenkins, James J. Bëeman, William Hoarde, Micajah Goodwin and R. J. West, of whom three may constitute a quorum to do business shall be and they are hereby appointed commissioners to lay out and sell lots if necessary, and to superintend the carrying out of such propositions as may have been made in behalf of the location selected, and report to the Chief Justice, whether or not the bonds containing propositions in favor of said selected place, have been strictly complied with, by the makers and obligors of the same.



**SEC. 6.** *Be it further enacted,* That as soon as the county buildings are received by the Commissioners and reported to the Chief Justice, the Clerks of the District and County Courts, Sheriff and District Surveyor, shall remove their offices and papers to the place selected, as the county seat, and all Courts thereafter shall be held at the same county seat.

**SEC. 7.** *Be it further enacted,* That all laws and parts of laws, conflicting with this act are hereby repealed, and that this act take effect and be in force from and after its passage.

Approved, March 20, 1848.

## CHAPTER 129.

An Act to repeal the eleventh section of an act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, approved, February 4th, 1841.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the eleventh section of an act supplementary to an act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, approved, February 4th, 1841, be and the same is hereby repealed, and that this act take effect from its passage.

Approved, March 20, 1848.

## CHAPTER 130.

An Act for creating the County of Cooke, in honor of William G. Cooke.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That all that territory included within the following limits, to wit: beginning on Red River, at the North West corner of

Grayson County; thence South, to the North line of Denton county; thence West, to the Northwest corner of Denton County; thence South, thirty miles to the Southwest corner of said county of Denton; thence West, sixty miles; thence North to Red River; thence down said River, to the place of beginning; be and the same is hereby created a new county to be known and called Cooke.

SEC. 2. *Be it further enacted*, That the inhabitants residing within said limits, shall be entitled to all the rights, privileges and immunities, enjoyed by the inhabitants of other new counties in this State.

SEC. 3. *Be it further enacted*, That it shall be the duty of the Chief Justice of Denton County, to cause an election for county officers to be held in said Cooke County on the first Monday in August 1848; said election to be held in accordance with an act to provide for the organization of the several counties of the State, approved, 11th April, A. D. 1846.

SEC. 4. *Be it further enacted*, That the seat of Justice of said County, shall be at the residence of Aaron Hill, in said county, until otherwise provided by law; that this act take effect from and after its passage.

Approved, March 20, 1848.

## CHAPTER 131.

An Act regulating fees to be charged by the Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer, and Adjutant General.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be the duty of the Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer, and Adjutant General, to furnish any person who may apply for the same, with a copy of any paper, document, or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same.

**SEC. 2.** That it shall be lawful for the said Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer and Adjutant General, to demand and receive the following fees for the services mentioned in the preceding section:

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words, fifteen cents.

For copies of any paper, document or record in their offices, in any other language than the English, including certificate and seal, for each hundred words, twenty five cents.

For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words, thirty cents.

For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.

For each certificate not otherwise provided for, fifty cents.

**SEC. 3.** That it shall be the duty of the Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer, and Adjutant General, respectively, to keep a fee book in their several offices, in which they shall enter all the fees demanded or received for any of the services named in this act, and they shall quarterly furnish to the Comptroller an account of all fees so demanded and received by them respectively; which account shall be verified by affidavit: and they shall also, at the end of each and every quarter, pay over to the Treasurer of the State, all money received by them respectively, under the provisions of this act.

**SEC. 4.** That the Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer, and Adjutant General, respectively, or any person employed by them in their respective offices, shall demand and receive any other or higher fees than is prescribed in this act, for any of the services herein named; or shall fail to account for and pay over any such fees as required by this act, shall be liable to indictment by a Grand Jury, and on conviction thereof, shall be fined in a sum not less than one hundred dollars for each case.

**SEC. 5.** That nothing contained in this act shall authorize either of the officers herein named, to demand or receive from any officer of the State, for copies of any papers, documents, or records in their offices, or for any certificate in relation to any

matter in their offices, when such copies or certificates are required in the performance of any of the official duties of such office.

SEC. 6. That this act shall take effect and be in force from and after its passage.

Approved, March 20, 1848.

## CHAPTER 132.

An Act to change the name of Hn. Connor to Hn. Valentine Dalton, and to make him a lawful heir of Valentine T. Dalton.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the name of Hn. Connor be, and the same is hereby changed to Hn. Valentine Dalton, and the said Hn. Connor shall be, and he is hereby declared to be, the lawful heir of said Valentine T. Dalton, by the name aforesaid.

SEC. 2. That this act be in force and take effect from and after its passage.

Approved, March 20, 1848.

## CHAPTER 133.

An Act to define the time of holding elections for the several State and County Officers, and for Representatives to the United States Congress.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the next regular election for Governor, Lieutenant Governor, members of the State Legislature, Commissioner of the General Land Office, and Representatives to the United States Congress, shall be held on the first Monday in August, Anno Domini, 1849, and elections shall be held for the

said officers biennially thereafter, until otherwise provided by law.

SEC. 2. *Be it further enacted*, That there shall be elected in accordance with the provisions of law on the first Monday in August, Anno Domini, 1848, in each county in the State, one Chief Justice, four County Commissioners, one Sheriff, one Coroner, one County Clerk, two Justices of the Peace, and one Constable for each Justices precinct, and such other county officers as are or may be required by law to be elected by the people; an election shall be held biennially thereafter to fill such offices until otherwise provided by law.

SEC. 3. *Be it further enacted*, That there shall be elected in accordance with law, on the first Monday in August, Anno Domini, 1850, in each county in the State, one Clerk of the District Court, and elections shall be held on the same day every four years thereafter until otherwise provided by law.

SEC. 4. *Be it further enacted*, That all of the officers elected by authority of the second section of this act, shall hold their offices for two years after their election and until their successors be duly qualified.

SEC. 5. *Be it further enacted*, That an act entitled an act to fix the time of holding elections for members of the Congress of the United States, approved on the 11th May, 1846, be, and the same is hereby repealed.

Approved, March 20, 1848.

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## CHAPTER 134.

An Act prescribing the mode of establishing the liabilities of drawers and endorsers of Bills of Exchange and Promissory Notes.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the holder of any bill of exchange or promissory note assignable or negotiable by law, may secure and fix the liabilities of any drawer or endorser of such bill of exchange, and every endorser of such promissory note without protest or notice by instituting suit against the acceptor of such bills of

exchange, or against the maker of such promissory note, before the first term of the District Court to which suit can be brought after the right of action shall accrue, or by instituting suit before the second term of said court, after the right of action shall accrue, and showing good cause why suit was not instituted before the first term next after the right of action accrued.

SEC. 2. That whenever the amount of such bill of exchange or promissory note shall be within the jurisdiction of a Justice of the Peace, the holder thereof may secure and fix the liability of any drawer or endorser, by instituting suit against the acceptor or maker within sixty days next after the right of action shall accrue.

SEC. 3. That the drawer of any bill of exchange which shall not be accepted, when presented for acceptance, shall be immediately liable for the payment thereof, and the holder of such bill, may secure and fix the liability of any endorser thereof, by instituting suit against such drawer within the time and in the manner prescribed by the first and second sections of this act.

SEC. 4. That the holder of any such bill of exchange or promissory note, may also secure and fix the liability of any drawer or endorser of such bill of exchange or promissory note for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by some Notary Public of any county for non-acceptance, or non-payment, and giving notice of such protest to such drawer or endorser, according to the usage and custom of merchants.

SEC. 5. That it shall be the duty of every Notary Public who shall protest any bill of exchange or promissory note for non-acceptance or non-payment, to set forth in his protest and in his notarial record, a full and true statement of what shall have been done by him in relation thereto, according to the facts, by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when, and where such demand was made. It shall also be his duty to make the requisite notices of protest for the drawers and endorsers who are sought to be made liable, and when any such notice shall be served by him, he shall note in his protest, and notarial record, on whom and when such notice was served, and when such notice shall be deposited in the post.

office by him, he shall specify, when and where mailed, and to whom, and where directed, and such protest, or a copy of such notarial record, certified under the hand and seal of such Notary Public shall be admitted in all the courts of this State, as evidence of the facts therein set forth.

SEC. 6. That three days of grace shall be allowed on all bills of exchange and promissory notes, assignable and negotiable by law; *Provided*, that the fourth, fifth and sixth sections of this act, shall extend only to contracts between merchant and merchant, their factors and agents.

SEC. 7. That the first section of an act, entitled "an act to dispense with the necessity of protesting negotiable instruments for dishonor, and of giving notice thereof; and to regulate assignments of all written instruments be, and the same is hereby repealed, and that this act take effect and be in force from and after its passage.

Approved, March 20, 1848.

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## CHAPTER 135.

An Act authorizing the appointment of a Fiscal Agent, and for the better security of the revenue.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Comptroller of Public Accounts, is hereby authorized to appoint a Fiscal Agent, whose duty it shall be to inspect and examine into the condition of the accounts of various revenue officers throughout the State, as well as those of the late Republic of Texas and make settlement with the same, and to receive the public moneys collected by them, or that may hereafter be collected by said officer under such instructions as may be furnished to him by the Comptroller of Public Accounts.

SEC. 2. *Be it further enacted*, That said agent before entering upon duties of said agency, shall give a bond payable to the Governor of the State, for the sum of twenty thousand dollars, with at least three good and sufficient securities to be approved of by the Comptroller of Public Accounts, and shall

take and subscribe the oath prescribed by the Constitution, which, together with the bond, shall be filed in the office of the Comptroller.

SEC. 3. *Be it further enacted*, That said agent shall receive as compensation, the sum of seventy-five dollars per month for the time actually engaged in said agency, and his necessary travelling expenses.

Approved, March 20, 1848.

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## CHAPTER 136.

An Act to provide for the exchange of books, maps and charts.

SECTION. 1. *Be it enacted by the Legislature of the State of Texas*, That the Governor of the State be, and is hereby authorized and required to forward to the Librarian of Congress, to the Secretary of State of the United States, to the Secretary of the Treasury of the United States, to the Executive Departments of all the States of the Union, to each Foreign Librarian or Government, with whom a system of literary exchange may be established, and to such associations and societies for the promotion of the arts and sciences as he may deem advisable, copies of all Laws, Judicial Reports, Maps, Charts, and other productions of a Literary, Scientific, or political character, printed or published by order of the Legislature, or at the expense of the State.

SEC. 2. *Be it further enacted*, That the Secretary of the State be required to safely keep all books, maps, charts, or publications forwarded to or received at his office; the same to constitute a State Library under his control, subject however, to the inspection and use of all officers of the State Government, and both branches of the Legislature.

SEC. 3. *Be it further enacted*, That the sum of three hundred dollars or so much thereof as may be necessary, be, and the same is hereby appropriated to pay the charge of transportation and such other incidental expenses as may be incurred in carrying this act into effect.



SEC. 4. *Be it further enacted*, That this act take effect and be of force from and after its passage.

Approved, March 20, 1848.

## CHAPTER 137.

An Act prescribing the punishment for cutting down, carrying away or destroying trees or timber upon any land without the consent of the owner.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That if any person shall wilfully and knowingly cut down, carry away or destroy any tree or timber, upon any land not his own, without first having the consent of the owner, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not less than ten dollars, nor more than one hundred dollars.

SEC. 2. That any person guilty of a misdemeanor, as defined in the first section of this act, may be prosecuted for the same, before a Justice of the Peace, or the District Court of the county in which the offence was committed, and any person convicted and fined for any such misdemeanor, shall be committed to the jail of the county until such fines and all costs are paid; *Provided*, the imprisonment does not exceed ninety days.

SEC. 3. That nothing contained in this act, shall be so construed as to authorize a prosecution against any person for cutting down or carrying away any tree or timber for the purpose of making or repairing any public road, passing over the land from which such tree or timber may have been cut or carried away.

SEC. 4. That all fines that may be collected under the provisions of this act, shall be paid into the County Treasury of the county where the offence was committed, for the use of such county; and a conviction under the provisions of this act, shall not be a bar to a civil suit, or action for damages, by the owner of the land.

Approved, March 20, 1848.

## CHAPTER 138.

An Act making Appropriations for the support of the Government, for the years 1848 and 1849.

**SECTION 1.** *Be it enacted by the Legislature of the State of Texas,* That the following sums be, and the same are hereby appropriated, for the service and support of the Government, for the years 1848 and 1849:

For remainder of mileage and per diem pay of the members of the second Legislature of the State of Texas, eighty-seven members, per diem pay of the President of the Senate, and one interpreter, sixteen thousand five hundred dollars;

For salary of the Governor, annually, two thousand dollars;

For salary of Private Secretary, seven hundred and fifty dollars, annually;

For contingent expenses of the Executive Office, annually, four hundred dollars;

For salary of Secretary of State, annually, twelve hundred dollars;

For salary of Clerk of State Department, annually, seven hundred and fifty dollars;

For Contingent Expenses of State Department, annually, four hundred dollars;

For salary of Comptroller of Public Accounts, annually, twelve hundred dollars;

For Book-keeper in Comptroller's Office, annually, eight hundred dollars;

For Clerk in Comptroller's Office, annually, seven hundred and fifty dollars;

For Contingent Expenses of Comptroller's Office, one hundred and fifty dollars, annually;

Stationery and Books for Comptroller's Office, two hundred and fifty dollars, annually;

Postage for Comptroller's Office, two hundred dollars, annually;

Printing for Comptroller's Office, three hundred dollars, annually;

For salary of Treasurer of the State, annually, twelve hundred dollars;

For Contingent Expenses of State Treasurer's Office, one hundred and fifty dollars, annually;

For purchase of Books and Stationery, and for repairs to the Treasurer's Office, one hundred and fifty dollars;

For salary of the Adjutant General, annually, and for closing up the business of the late War and Marine department, one thousand dollars;

For Contingent Expenses of Adjutant General's Office, including Printing, &c., annually, three hundred dollars;

For salary of the Commissioner of the General Land Office, annually, fifteen hundred dollars;

For salary of two Draughtsmen in the General Land Office, each, annually, eight hundred dollars;

For salary of Chief Clerk in the General Land Office, annually, one thousand dollars;

For salary of Translator and Recorder of Spanish Deeds in the General Land Office, annually, one thousand dollars;

For pay of eight Assistant Clerks in the General Land Office, annually, each, seven hundred and fifty dollars;

For purchase of Blank Patents, annually, two thousand dollars;

For Stationery and Books in the General Land Office, annually, five hundred dollars;

For Postage of the General Land Office, three hundred dollars;

For Contingent Expenses in the General Land Office, annually, three hundred dollars;

For salary of the Attorney General of the State, annually, one thousand five hundred dollars;

For Contingent Expenses of Attorney General's Office, one hundred dollars, annually;

For salaries of three Judges of the Supreme Court, annually, two thousand dollars, each;

For pay of Clerk of the Supreme Court, annually, three hundred dollars;

For payment of claims outstanding against the Supreme Court, two hundred and fifty dollars;

For pay of Sheriff for services in attending on the Supreme Court, two hundred dollars;

For Contingent Expenses of Supreme Court, two hundred and twenty-five dollars;

For salaries of eleven Judges of the District Court, annually, seventeen hundred and fifty dollars, each;

For salaries of eleven District Attorneys, annually, five hundred dollars, each;

For payment of the Pension of Joseph Cecil, annually, three hundred dollars;

For payment of Pension of Maria Jesusa Garcia, to present time, and for funeral expenses, seventy-five dollars, which may be drawn by her son, Miguel Garcia;

For payment of Pension of J. C. Neil, annually, two hundred dollars;

For payment of Pension of David F. Webb, annually, one hundred dollars, for two years;

For payment of Pension to disabled seamen, annually, six hundred and twenty-two dollars;

For compensation of Clerks of both Houses of the Legislature, five dollars per day, each;

For compensation of Sergeant-at-Arms, and Door-keepers of both Houses of the Legislature, five dollars per day, each;

For copying and printing the Laws and Journals of the Second Session of the Legislature, eight thousand dollars;

For copying and printing Journals of the First Legislature, three thousand dollars;

And one thousand dollars for the translating and publishing in the German and Spanish Languages, the Constitution and such general laws now in force, as the Governor may deem advisable, in accordance with the provisions of an act, approved 18th April, A. D. 1846;

For the erection and support of a Penitentiary, ten thousand dollars, annually;

For compensation of Messrs. Logan & Sterne, for publishing notices of suits against Colonization Contractors, fifty dollars;

For compensation of Charles De Morse, for publication in the Northern Standard, the case of the State against Charles Fenton Mercer and Associates, one hundred dollars;

For pay and expenses of a Fiscal Agent, one thousand dollars, annually; or, so much thereof as may be necessary;

For pay for County Maps, one thousand dollars;

For the purchase of Stationery, for the use of the next Legislature, to be drawn and disbursed by the Comptroller of Public Accounts, five hundred dollars.

**Sec. 2.** *Be it further enacted,* That a sufficient amount is hereby appropriated, to cover the pay and expenses of the late Convention, including the certificates of the members thereof,

upon which drafts were drawn by the late Secretary of the Treasury, on Collectors of Revenue: that the Comptroller and Treasurer, be, and they are hereby, authorized to open an account, and make a proper settlement of a receipt, in the hands of the Treasurer, of the late G. W. Terrell, for six hundred and sixty-six dollars and sixty-seven cents, for his services as District Judge, in the year 1841, by making the necessary charges for the payment thereof and the credit due the Treasurer on the transfer of said receipt and vouchers from his office to that of the Comptroller;

For compensation of Ford & Cronican, for publishing assessments of taxable property, assessed out of the counties wherein the property lies, five hundred dollars;

For compensation of the late Auditor, Charles Mason, for taking care of office, and for occasional reference to records and papers therein, during the years 1846 and 1847, six hundred dollars;

For compensation of the Comptroller of Public Accounts, for extra services in the discharge of the duties, imposed on him in relation to the public debt of Texas, three hundred dollars, annually;

For compensation of Thomas Ward, for taking care of the Capital, and Furniture, until the next biennial session of the Legislature, one hundred dollars;

For Freight on Books and Public Documents, sent to the State of Texas, one hundred dollars;

For compensation of Thomas J. Jennings, for services as Special Associate Judge of the Supreme Court, during the present session of the Court, three hundred dollars.

SEC. 3. *Be it further enacted*, That one-tenth of the annual revenue of the State, be, and they are hereby set apart for purposes of education, to be drawn from the Treasury in accordance with such laws as may be enacted;

And for the payment for District Maps already received by the Commissioner of the General Land Office, and not paid for, one thousand dollars;

For the transportation and distribution of the Laws passed by this Legislature, to and among the several counties of this State, to be drawn upon the draft of the Secretary of State, fifteen hundred dollars.

SEC. 4. *Be it further enacted*, That the Judge and District Attorney for the Eleventh Judicial District be allowed to draw

from the Treasury, after the first of April next, the whole amount of their annual salary for the first year, and the Treasurer is hereby directed to respect their drafts for the same.

SEC. 5. *Be it further enacted*, That this act take effect from and after its passage.

Approved, March 20, 1848.

## CHAPTER 199.

### An Act to provide for the Assessment and Collection of Taxes.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That there shall be elected by the qualified voters of every county within the State of Texas, on the first Monday of August, 1848, and every two years thereafter, until otherwise provided by law, an Assessor and Collector of Taxes, who shall hold his office for and during the term of two years, and until his successor shall have been qualified; and should, from any cause, the office of Assessor and Collector become vacant, before the expiration of such term, it shall be the duty of the County Court of the county in which such vacancy shall occur, to appoint an Assessor and Collector of Taxes, who shall be qualified in the same manner, and subject to a like bond as the Assessor and Collector elected; and the Assessor and Collector so appointed, shall hold his office for and during the unexpired term of his predecessor, and until his successor shall have been qualified.

SEC. 2. That every Assessor and Collector of Taxes shall, within twenty days after he shall have received notice of his election or appointment, and before entering upon the execution of the duties of his office, give a bond to the Governor of the State and his successors in office, in a sum which the County Court shall consider double the probable amount of the State Tax to be assessed in the county for one year, with at least three good and sufficient securities, to be approved by the County Court of his county, and shall take and subscribe the oath prescribed by the Constitution, which, together with said bond, shall be recorded in the office of the

County Clerk of said county, and deposited in the office of the Comptroller of Public Accounts; which bond shall be renewed each and every year, during the August term of the County Court; such bond shall be deemed to extend to the faithful execution of the duties of said Assessor and Collector of Taxes, and shall not become void upon the first recovery, but suit may be had thereon until the whole amount thereof be recovered.

SEC. 3. That the Assessors and Collectors of Taxes shall give a like bond, with the like conditions, to the Chief Justices of their respective counties, and their successors in office, in a sum not less than double the probable amount of the county tax to be assessed in the county for one year, which bond shall be recorded and deposited in the County Clerk's Office of the county, and shall be renewed in each and every year during the August term of the County Court, which bond shall not become void upon the first recovery; but suit may be had thereon until the whole amount thereof be recovered.

SEC. 4. That the Assessors and Collectors of the several counties of this State, shall severally prepare an assessment roll for their respective counties, in which they shall set down, in separate columns, in alphabetical order, the names of the taxable inhabitants thereof, the amount and description of the property taxed, real and personal, the value thereof, and the amount of taxes due thereon; for which purpose he shall, between the first days of January and June, call upon each person living in his county, for a list of his or her taxable property, and of all property subject to taxation, held by such person as trustee, guardian, executor, administrator, agent, or attorney: *Provided*, That, when the Assessor and Collector shall call at the usual place of abode of the party liable to taxation, in the absence of such person, a written or printed notice to render such list to the Assessor and Collector, shall serve in lieu of personal notice.

SEC. 5. That whenever any person is assessed as trustee, guardian, executor, administrator, agent, or attorney, it shall be done by the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.

SEC. 6. That if any person, when called upon by the Assessor and Collector of Taxes of the county in which such person resides, shall fail or refuse to render a list of his or her property, real or personal, or of that held as administrator, ex-

ecutor, guardian, agent, or attorney, which is liable to taxation, such person shall be liable to a fine of not less than ten or more than five hundred dollars, for the use of the State or county, as the case may be, to be recovered before any court of competent jurisdiction; and it shall be the duty of the Assessor and Collector of every county, to report all such cases to the proper court, and to attend there as a witness to prove such failure or refusal.

SEC. 7. That the list required under the fourth section of this Act, shall contain a description of all the taxable property in his or her own right or held as guardian, executor, administrator, agent or attorney, on the first day of January for the current year, verified by the oath of the party returning the same, made and subscribed before the Assessor and Collector of Taxes, or any Justice of the Peace of the county wherein such parties reside; upon which property so returned, the Assessor and Collector and the party rendering the same, shall proceed to assess the value; in case they cannot agree as to the amount thereof, each shall have the right to select a respectable freeholder to determine the same; and in case of disagreement between the parties so selected, a third shall be chosen by them, and the decision of a majority shall be final.

SEC. 8. That it shall be the duty of each Assessor and Collector of this State, to make out a list of all taxable property in his county, which has not been given in for assessment according to the provisions of this act; and for that purpose to examine the records and maps of the county; assessing all property in the name of the owner, if he be known, and, if not, then it shall be assessed by a description of the property; if lands, it shall be described by the number of the tract, quantity of acres, and to whom patented, or to whom surveyed for patent; and the value of all such property shall be determined by the Assessor and Collector, who shall appraise the same at its cash valuation, and no more: *Provided*, That in all new counties created at the present session of the Legislature, the taxes shall be assessed and collected in the county, or counties from which the territory composing such new county was taken, until such new county is organized in conformity to law,

SEC. 9. That the Assessor and Collector of Taxes, shall, on or before the first day of July, in each and every



year, make out in alphabetical order, three full and complete copies of his assessment roll, setting forth in separate columns, the different descriptions of taxable property, real and personal, rendered for taxation, owned or held by any person, firm, or corporate body in his county, and the value thereof, and in a separate portion of his assessment, in like manner, the taxable property of non-residents, not rendered for taxation, and the property where the owner is unknown, one copy of which he shall retain for his own use ; one he shall deposit in the office of the Clerk of the County Court of his county ; and one he shall cause to be deposited in the office of the Comptroller of Public Accounts, on or before the first day of September in each and every year.

SEC. 10. That if any Assessor and Collector of Taxes shall wilfully fail or refuse to make out and return his assessment roll, as required by the provisions of this act, or shall make out and return an unfair or false assessment roll, he shall in each, or either case, forfeit and pay, for the use of the State or county, as the case may be, double the amount of the damages sustained by the State or county, by the malfeasance of such Assessor and Collector, to be recovered of him and his securities in any court of competent jurisdiction.

SEC. 11. That whenever any Assessor and Collector shall ascertain that any taxable inhabitants and property have not been assessed for any past year, he shall assess the same in his next assessment roll, at the same rate under which such inhabitant and property should have been assessed for such year, and such assessment shall be entered at the end of the assessment roll, stating the years for which such inhabitant and property should have been assessed ; and the taxes thereon shall be collected in the same manner as other assessments.

SEC. 12. That every Assessor and Collector of Taxes, in the execution of the duties of his office, shall use the forms and pursue the instructions of the Comptroller of Public Accounts ; and upon producing to the Comptroller, after his assessment has been completed, a certificate from the County Court of his county, that the assessment made and the roll deposited in the County Clerk's office of his county is a fair, correct and true assessment of his county, such Assessor and Collector shall receive a compensation, on the amount of the assessment for the use of the State of eight per cent., upon all sums of one thousand dollars and less ; five per cent.

upon all sums less than two thousand dollars and more than one thousand dollars ; four per cent. on all sums less than five thousand dollars and more than two thousand dollars ; three per cent on all sums less than ten thousand dollars and more than five thousand dollars ; and for all sums more than ten thousand dollars, one per cent. on the amount thereof, and shall receive upon the amount of the assessment made for the county one-half of the like per cent.

SEC. 13. That every Assessor and Collector of Taxes shall, so soon as he shall have made out and returned the assessment roll of his county, as required by the provisions of this act, proceed to collect the Taxes therein mentioned, and for that purpose shall call at least once upon every person taxed, or on the agent or attorney of such person, or at the usual place of his or her residence, if within the county, and demand the payment of the taxes charged upon his person or property.

SEC. 14. That if any person shall fail or refuse to pay the tax imposed upon him and his property, by law, until the first day of November, in each year, the Assessor shall levy, by virtue of his tax list, upon so much property, liable to taxation, belonging to such person, to be found in his county, as may be sufficient to pay his or her taxes ; and in case such property is about to be removed out of the county, the Assessor and Collector shall, in like manner, proceed to take into his possession, so much property as will pay the taxes assessed, and costs of collection.

SEC. 15. That every Assessor and Collector of Taxes shall give notice of the time and place of the property so levied upon to be sold, at least thirty days previous to the day of sale by advertisement in writing, to be posted up at the court-house door of his county, and in two other public places in his county ; and such sale shall take place at the court-house door of the county in which the assessment is made, by public auction, and if the property so levied upon prove to be insufficient to satisfy the amount of taxes due and costs of sale, the Assessor and Collector shall levy upon and sell so much other taxable property belonging to such person, as will be sufficient to satisfy such taxes, in the manner prescribed in the preceding part of this section ; and after paying the taxes, the surplus, if any, shall be paid over to the person for the payment of whose taxes the levy and sale shall have been made.

SEC. 16. That the Assessor and Collector shall, when any property has been sold for the payment of taxes, make and execute a deed for said property to the person or persons purchasing the same; which, when recorded according to law, shall be prima facie evidence that all the requisitions of the law have been complied with in making such sale: *Provided, however,* That the owner of such property shall have the right to redeem the same at any time within twelve months of the day and date of the sale thereof, upon the payment of double the amount of the taxes for which the same was sold, and costs of sale.

SEC. 17. That it shall be lawful for any person or persons who may own lands or other property liable to taxation, situated in any other county than that in which such person may reside, to pay all taxes due upon the same to the Comptroller of Public accounts; *Provided, however,* That the taxes of such persons be paid to the said Comptroller, or to the Assessor and Collector of the county in which the property may be situated, on or before the first day of November in each year; and it shall be the duty of the Comptroller to furnish a list of all such taxes so paid to him, together with the names of the persons paying the same, to the Assessor and Collector of the county for which such taxes were paid.

SEC. 18. That it shall be the duty of the Assessor and Collector of Taxes, or the Comptroller of Public Accounts, as the case may be, to receive the tax on the part of any lot, piece, or parcel of land charged with taxes: *Provided,* The person paying such taxes shall furnish the Assessor and Collector, or the Comptroller of Public Accounts, with a particular specification of such part, or if the part on which the tax shall be so paid be an undivided share, shall state to the Assessor and Collector, or Comptroller of Public Accounts, as the case may be, who the owner of such share is, that it may be excepted in case of sale for tax on the remainder.

SEC. 19. That the Assessors and Collectors of Taxes in the State of Texas shall receive in payment of all taxes and revenue imposed according to law, all coins made current by the laws of the United States, and the Exchequer Bills of the late Republic of Texas.

SEC. 20. That it shall be the duty of each and every Assessor and Collector in this State, to pay over all moneys collected by him for the use of the State, into the Treasury thereof, on

or before the first day of December in each and every year, and on or before the same day in each and every year, to pay over into the Treasury of the county the moneys collected for the use of the county.

SEC. 21. That each and every Assessor and Collector of Taxes shall, annually, by the fifteenth day of October, make out three full and correct lists of all delinquent tax payers residing in his county, and the amount of taxes due by each; and also three descriptive lists of all taxable property in his county on which the taxes remain unpaid, belonging to non-residents, who shall, in said list be named if known; if unknown, shall be so described, one of each of which lists shall be filed in the office of the Clerk of the County Court of his county, another shall be posted up at the court house door of said county, and the other shall be transmitted to the Comptroller of Public Accounts; but upon a settlement, no allowance shall be made for insolvent persons, unless the Assessor and Collector shall present a list thereof, certified to by the County Court of his county, as being a correct copy of the list of insolvent taxed persons filed in the office of said court, and said Assessor and Collector shall thereafter collect, if practicable, the taxes due from the delinquents therein specified, and make return thereof immediately, as required by law.

SEC. 22. That every Assessor and Collector of taxes for the State, on the settlement of his accounts with the Comptroller of public accounts, shall be entitled to a compensation on the amount by him collected and paid into the Treasury for the use of the State, of eight per cent, on all sums of a thousand dollars and less, five per cent, on all sums less than two thousand dollars and more than one thousand dollars; four per cent, on all sums less than five thousand dollars, and more than two thousand three per cent, on all sums less than ten thousand dollars, and more than five thousand dollars, and one per cent, on all sums over ten thousand dollars; and on a settlement of his accounts with the County Treasurer of his county, one half of the like per cent. on the amount collected by him and paid into the Treasury for the use of the county.

SEC. 23. That if any Assessor and Collector of taxes shall demand and receive of any person more than lawful taxes, said officer shall forfeit and pay (upon conviction before any Court of competent jurisdiction) to the use of the party aggrieved, five times the amount so demanded and received; and shall be

subject to presentment and indictment by the Grand Jury for malfeasance, and upon conviction, shall be fined in a sum of not less than ten nor more than fifty dollars, to be paid when collected into the county Treasury.

SEC. 24. That if any Assessor and Collector shall fail to pay into the State Treasury the amount of taxes by him collected for the use of the State on or before the day on which the same is made payable by the provisions of this act, and to pay into the treasury of his county, the entire amount collected by him for the use of the county, such Assessor and Collector, and his securities, shall be liable to be sued upon their bond or bonds, for the damages sustained by the State or county, and shall pay the cost and charges of such suit, whether the ultimate decision be in his favor or against him.

SEC. 25. That any person wishing to engage in any vocation or calling, on which a license tax is imposed by law, shall, before engaging therein, pay to the Assessor and Collector of the county in which such vocation or calling is intended to be pursued, the amount of the license tax imposed for the use of the State, and to the County Treasurer the tax imposed for the use of the county, the receipts whereof shall entitle such person on application to the County Clerk, to a license to pursue such vocation or calling during such period, authorized by law, as may be covered by the amount of said receipt; *Provided*, that when a license to pursue any vocation is desired for a shorter period than one year, and not less than four months, the Assessor and Collector, or the County Treasurer, as the case may be, may receive the amount required in proportion to the time for which such license is desired; and on filing the receipt of the Assessor and Collector, or County Treasurer, as the case may be, the Clerk shall issue, a license for the time corresponding with the amount which has been paid.

SEC. 26. That when any person, hawkers and pedlars excepted, who shall fail or refuse to pay the tax contemplated by the preceding section of this act, before engaging in any vocation or calling on which such tax is imposed, and obtain license therefor, it shall be the duty of the Assessor and Collector of the county, or the County Treasurer, as the case may be, to sue out an attachment before a Justice of the Peace, for the amount of the tax for one year upon such vocation or calling, so practiced in contravention of law, and levy upon any of the property of the delinquent tax payer sub-

ject to taxation; and it shall be the duty of each and every Justice of the Peace to issue all such writs and try the same, in accordance with the provisions of the law regulating attachments in other cases, whenever application shall be made in due form by the Assessor and Collector of taxes or the County Treasurer of the county as the case may be, provided that no attachment bond shall be required of said Assessor and Collector, or County Treasurer.

SEC. 27. That to enable the Assessor and Collector to ascertain unrendered property in the several counties, it is hereby made the duty of the Clerks of the County Courts, and the County and District Surveyors to exhibit the records and maps in their charge to the Assessor and Collector of taxes; and the refusal to do so by either of the said County Clerks, or District or County Surveyors, such officer so refusing, shall incur the penalty of fifty dollars, recoverable before any court having jurisdiction or cognizance thereof, with costs of suit; which penalty when collected shall be paid, the one half into the State Treasury and the other half into the Treasury of the County wherein the penalty was incurred.

SEC. 28. That if from any cause the direct taxes of any county are not assessed and collected within the periods mentioned in this act, the Comptroller of Public Accounts shall appoint some other time, within which said taxes shall be assessed and collected; and no person shall suffer any of the penalties herein imposed, from any failure caused by such unavoidable change of time; but any persons who shall fail to render their assessment lists, and pay their taxes within the period so designated by the Comptroller, shall incur all the penalties imposed by this act.

SEC. 29. That if from any cause, the sale of property seized for taxes, shall not take place, at the time first appointed, the Assessor and Collector shall appoint some other time, give the like notice and proceed to sell such property in the manner prescribed in the first instance by this act.

SEC. 30. That if any officer is sued or prosecuted in consequence of proceedings made by him under the authority of this act, or any law in force for the collection of revenue, it shall be lawful for him to plead the general issue and give this act, or the law under which he has proceeded, as an especial matter in evidence.

SEC. 31. That when any lands or tenement shall be adver-

tised for sale by the Assessor and Collector of taxes, for any taxes or other dues accruing to the State, and such lands or tenements cannot be sold for the want of bidders, it shall be the duty of the Assessor and Collector to bid off the same for the State, for the amount of taxes so due, and when such lands are not redeemed within one year from the date of sale, by the owner or owners, or some other person paying the amount of such taxes and costs of sale, and one hundred per centum thereon: it shall then become public domain and subject to location by any person holding a legal land warrant against the State, by such person paying the amount of tax for which such land was sold and costs of sale with one hundred per centum thereon. And it shall be the duty of the Commissioner of the General Land Office to issue patents on all surveys of land sold in conformity of this act, on a legal return and showing being made to him of the same.

SEC. 32. That if any person shall peddle any goods, wares or merchandize in any county in this State, without first obtaining a license from the Clerk of the County Court of such county, it shall be the duty of the Assessor and Collector to seize so much of the goods, wares and merchandize so peddled, or any other property subject to sale by execution, belonging to such person, and after giving ten days notice by advertisement in at least three public places in his county, he shall proceed to sell at the court house door of his county, to the highest bidder, for cash, so much of said property so seized and levied upon as will be of value sufficient to pay the license tax for one year and the costs of sale, and the Assessor and Collector shall be entitled to the same fees and commissions that Sheriff's are entitled by law to receive upon sales by execution.

SEC. 33. That if any Assessor and Collector shall fail or refuse to surrender up his tax roll to his successor in office, upon his application, he shall upon conviction in the District Court, be fined in such sum as the court may adjudge; not less than fifty dollars.

Approved, March 20, 1848.

## CHAPTER 140.

Joint Resolution instructing our Senators and requesting our Representatives to procure the passage of an act of Congress concerning Military Posts on the frontier, and relative to intercourse with Indians.

SECTION 1. *Be it resolved by the Legislature of the State of Texas,* That our Senators in Congress be instructed and our Representatives requested to use their influence for procuring the passage of an act establishing a chain of Military Posts in advance of the settlements between Red River and the Rio Grande, and that said Posts shall be removed from time to time, as the settlements advance.

SEC. 2. That we also recommend that in any Congressional enactment concerning Texas Indians, suitable provisions may be incorporated, requiring the Indian agents of the United States, and the Commandant of the troops in the Government service, stationed on our frontier to confer with the Governor of Texas that they may jointly co-operate in pursuing such policy as may best tend to the preservation of the present friendly relations of the Indians and the protection of the rights of our citizens.

SEC. 3. That the Governor be requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

Approved, March 20, 1848.

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CHAPTER 141.

An Act to legalize certain headright certificates issued by George W. Miles, former Chief Justice of Liberty County.

Whereas, the seventh section of an act entitled "an act to authorize the holding of the District Court in three places in Liberty County and for other purposes, approved, January 6th, 1844, was construed by G. W. Miles, former Chief Justice of said county to authorize him to act in his official ca-



capacity without the co-operation of the Associate Justices; and, whereas, acting under that construction of the aforesaid law, land certificates have been issued by the said Chief Justice and Clerk, on the proper proof being made: Therefore.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That all land certificates issued by G. W. Miles former Chief Justice of Liberty County, after the passage of the above named law, and which have been issued in all other respects in conformity to law, and have been properly returned to the General Land Office, as genuine, shall have the same force and effect, as like certificates issued by the Chief Justice and the Associate Justices.

Approved, March 20, 1848.

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## CHAPTER 142.

An Act to change the Northern boundary line of Limestone County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That from and after the passage of this act the Northern boundary line of Limestone County shall be as follows: Commencing at the mouth of the Aquilla creek where said creek empties into the Brazos River; thence North eighty one degrees East, until it intersects the present boundary line of said county at or near the Tehuacana hills; thence North, sixty degrees East with said line to the Trinity River.

Approved, March 20, 1848.

## CHAPTER 143.

An Act to provide for ascertaining the debt of the late Republic of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Auditor and Comptroller of Public Accounts as soon as practicable, after the passage of this act, shall cause six months notice to be given, by publication in some newspaper, published weekly in the city of Austin, New Orleans, Washington city, and New York, requiring all persons having any claim or demand for money, against the late Republic of Texas, to present the same to the Auditor and Comptroller of Public Accounts, on or before the second Monday in November, 1849; and all claims that shall not be presented on or before that time shall be postponed.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Auditor and Comptroller, jointly to receipt, under their seals of office, for all claims presented to them, setting forth the par value thereof, at the time the same accrued, or were issued; the name of the person to whom the debt accrued, the date and amount thereof. The Auditor and Comptroller shall each keep a correct list in books, kept for that purpose separately; First, the Audited or ascertained claims; such as stock bonds, Treasury notes, military scrip, or any other audited or ascertained claim. Second, all claims with sufficient evidences and vouchers to authorize them to audit, under the late Republic of Texas. Thirdly, such claims, as are not sufficiently authenticated by vouchers. It is hereby made the duty of the Auditor and Comptroller, to report to the next session of the Legislature, for its action.

SEC. 3. *Be it further enacted,* That it shall be the duty of the Comptroller and Auditor, jointly to report, to the next biennial session of the Legislature, for final adjustment the whole amount and character of the Public Debt ascertained, according to the provisions of this act, together with such suggestions, concerning the same, as they may deem just and proper; and they shall likewise report semi-annually, from the first of May, 1848, to the Governor, the amount and character of claims presented and filed in their office; and it shall be the duty of the Governor to cause a synopsis of the report to be printed in some newspaper at the seat of Government in the State.

SEC. 4. *Be it further enacted,* That it shall be the duty of the

SEC. 4. *Be it further enacted*, That it shall be the duty of the Auditor and Comptroller of Public Accounts to classify all claims presented under the provisions of this act, reducing the same to the actual par value which may have been realized by the late Republic, and may report such further classification, as they may deem best calculated to preserve the rights of the State, and to do equity to the holders of the claims; and the classification, and rate of payment, recommended by the Auditor and Comptroller, shall be subject to the revision, amendment and ratification of the next Legislature; and that this act take effect from and after its passage.

Approved, March 20, 1848.

#### CHAPTER 144.

An Act to provide for the more certain collection of the Taxes for the years 1846 and 1847.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That if any person against whom any tax has been assessed, for the years 1846 and 1847, shall fail to pay the same on or before the first day of April of the present year, it shall be the duty of the proper assessor and collector, to proceed to seize and sell the property of such person, giving notice in accordance with the provisions of the 18th section of an act to provide for the assessment and collection of taxes, approved 13th May, 1846, such sales may take place at any time between the first of April and the first of July of the present year.

SEC. 2. That the Comptroller of Public Accounts, after making the comparison of assessment rolls, as required by law, shall direct sales to be made of so much of the property of non residents or of unrendered property on which the taxes have not been paid for the years 1846 and 1847, as will satisfy the taxes owing, and costs of process, which sales when made shall be as valid as though the property had been advertised in accordance with the 15th section of the above recited act, which section is hereby repealed.

SEC. 3. That each Assessor and Collector shall be allowed two dollars as costs for each sale of property as directed by this

act, together with all reasonable costs for seizing and advertising the same, which shall be made out of the property thus sold.

SEC. 4. That this act take effect from and after its passage.  
Approved, March 20, 1848.

## CHAPTER 145.

An Act to provide for vesting in the State escheated property.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That if any person die seized of any real or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate, shall be absent for the term of seven years, and is not known to exist, such estate shall escheat to and vest in the State.

SEC. 2. That when the District Attorney shall be informed or have reason to believe that an executor under the will, has not accepted the trust, and that no administrator, with the will annexed, has been appointed, and where said Attorney shall discover that no letters of administration on the estate of an intestate, who has died without heirs, has been granted, he shall file a petition in behalf of the State, in the District Court of the county where such succession is required to be opened, according to the laws regulating the place of opening successions, which petition shall set forth a description of the estate, the name of the person last lawfully seized or possessed of the same; the names of the tenants, or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim, and the facts and circumstances in consequence of which such estate is claimed to have escheated, praying for a writ of possession for the same, in behalf of the State.

SEC. 3. That such court shall award and issue scire facias against such person, bodies politic or corporate, as shall be alleged in such petition to hold possession or claim such estate, requiring them to appear and show cause, why such estate shall not be vested in the State, at the next term of the court.

SEC. 4. That such scire facias shall be served ten days before the return day thereof; and the court shall make an order, setting forth briefly the contents of such petition, and requiring all persons interested in the estate to appear and show cause at the next term of said court why the same should not be vested in the State, which order shall be published four weeks in some newspaper printed in the State.

SEC. 5. That all persons, bodies politic, and bodies corporate named in such petition, as tenants or persons in actual possession or claimants of the estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition, or the title of the State to the lands, and tenements therein mentioned, at any time on or before the third day after the return of scire facias, and any other person claiming an interest in such estate, may appear and be made a defendant, and plead by motion for that purpose in open court, within the time allowed for pleading.

SEC. 6. That if no person after notice as aforesaid, shall appear and plead within the time prescribed by law, then judgment shall be rendered by default in behalf of the State.

SEC. 7. That if any person appear and deny the title set up by the State, or traverse any material fact in the petition, issue shall be made up and tried as other issues of fact, and a survey may be ordered as in other cases where the titles or boundaries of land are drawn in question.

SEC. 8. That if after the issue and trial, it appears from the facts found or admitted, that the State hath good title to the estate, real or personal, in the petition mentioned or any part thereof, judgment shall be rendered, that the State be seized or possessed thereof, and at the discretion of the Court, recover costs against the defendants.

SEC. 9. That if it appear that the State hath no title in such estate, the defendant shall recover his costs, to be taxed and certified by the Clerk and the Comptroller of Public Accounts, shall, on such certificate being filed in his office, issue a warrant therefor on the Treasury of the State, which shall be paid as other demands on the Treasury.

SEC. 10. That when any judgment shall be rendered, that the State be seized or possessed of any estate, such judgment shall contain a description thereof, and shall vest the title in the State.

SEC. 11. That a writ shall be issued to the Sheriff of the

proper county, commanding him to seize such estate, vested in the State, and if the same be personal property, or real estate, he shall dispose thereof at public auction, in the manner provided by law for the sale of property under execution.

SEC. 12. That the District Attorney for the District, shall cause two copies of the record and account of sale to be exemplified under the seal of the Court, and shall cause one of the same to be deposited in the office of the Comptroller of Public Accounts, and the other to be recorded in the office of the Recorder of the county in which the property was sold, and such record shall preclude all parties and privies thereto, their heirs and assigns.

SEC. 13. That any party who shall have appeared to any proceedings, and the District Attorney, on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment.

SEC. 14. That the Comptroller shall keep just accounts of all moneys paid into the Treasury and of all lands vested in the State under the provision of this act.

SEC. 15. That if any person appear, after the death of the testator or intestate, and claim any money paid into the Treasury under this act, as heir, or devisee, or legatee thereof, he may file a petition in the District Court for the county where the estate was sold, stating the nature of his claim, and praying that such money may be paid to him, a copy of which petition shall be served on the District Attorney for the District, at least twenty days previous to the return day of the process, who shall put in an answer to the same.

SEC. 16. That the Court shall examine the claim and the allegations and proofs, and if they shall find that such person is an heir, devisee, legatee or legal representative, whether citizen or foreigner; such court shall make an order, directing the Comptroller to issue his warrant on the Treasurer for the payment of the same, but without interest or costs, a copy of which order, under the seal of the Court, shall be a sufficient voucher for issuing such warrant, and the same proceedings shall be instituted for the recovery of any money or property heretofore deposited with the Treasurer or Comptroller in accordance with the laws heretofore existing.

SEC. 17. That it shall be the duty of the District Attorney, to examine the proceedings in successions, heretofore opened in any Probate Courts in their Districts, and if it appear that any

Clerk of the Probate Court, any executor or administrator, has failed to pay over to the Treasurer of the late Republic any moneys or funds, in the manner heretofore provided by law, or has failed to deposite any title papers to land, which have not been claimed by any heir, devisee, or legal representative, he shall notify such person to pay and deliver over the same to him; according to the provisions of this act, and on failure of such persons so to do, institute legal proceedings against him, to carry into effect the object of this act.

SEC. 18. That all property escheated under the provisions of this act, shall remain subject to the disposition of the State, as may hereafter be prescribed by law.

SEC. 19. That all laws and parts of laws conflicting herewith, be and the same are hereby repealed.

Approved, March 20, 1848.

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## CHAPTER 146.

An Act supplementary to "an act for the further organization of Henderson County," approved March 14, 1848.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the time specified in the second section of this act to which this is a supplement, for the election of the County Seat of Henderson County, be extended to the first Monday in July next; and that this act take effect from and after its passage.

Approved, March 20, 1848.

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## CHAPTER 147.

An Act requiring the Counties of Polk and Tyler to pay a portion of the debt of Liberty County from which they were taken.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the counties of Polk and Tyler taken from and

formed out of the former territory of Liberty county, shall not be exempt from their portion of the debt due by the former county of Liberty, but shall assume and pay so much of the old debt of the county of Liberty, contracted previous to a division of the same, as was due to any person or persons residing within the limits of their respective counties at the time of such division: provided, that if the said debts or liabilities should have been transferred by the original holder to any person or persons residing in any other county, that then and in that case, the same shall be paid by the county in which said original holder or claimant of the debt was living at the time of the organization of the said counties of Polk and Tyler.

SEC. 2. *Be it further enacted,* That all taxes, dues and demands due and owing to the county of Liberty by citizens of the county of Polk upon property situated within the limits of Polk county, shall accrue and be payable to the county of Polk; and in like manner all taxes, dues and demands, due and owing to the county of Liberty by citizens of Tyler county, upon property situated in the limits of said county of Tyler shall accrue and be payable to the county of Tyler, and all such taxes, dues and demands, shall be collected by the proper officers of the counties of Polk and Tyler respectively, and paid into the county Treasuries of said counties in like manner as the same could have originally been collected and paid into the county Treasury of Liberty county.

SEC. 3. *Be it further enacted,* That the former collector of taxes for the county of Liberty, or whoever may have the same in possession shall deliver to the Assessors and Collectors of the counties of Polk and Tyler respectively, a list of the names of all persons residing in said counties, who may owe county taxes, showing the amount due by each, and the year or years for which the same may be due and owing.

Approved, March 20, 1848.



## CHAPTER 148.

An Act to authorize and require the Governor to employ counsel to represent the State in suits and actions wherein the State may be interested that may be taken to the Supreme Court of the United States.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Governor be and he is hereby authorized and required to contract with, and employ competent counsel to represent the interest of the State in all suits and actions having for their object the establishment of any land certificates issued by the Republic of Texas and not recommended as genuine and legal claims by the commissioners appointed under the act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants, and also, all suits and actions involving the constitutionality of the revenue laws of the late Republic in all cases where any of said suits or actions may be taken to the Supreme Court of the United States, and all other cases involving the rights of the State of Texas that may be carried to the Supreme Court of the United States.

SEC. 2. That the sum of four thousand dollars be, and the same is hereby appropriated for the purpose of carrying the foregoing act into effect, and that the Comptroller shall draw his warrant on the Treasurer in favor of the person or persons who may be employed by the Governor under the provision of the foregoing act, for such sum or sums as he or they may be entitled to under his or their contract with the Governor, after such services have been rendered.

Approved, March 20, 1848.

## CHAPTER 149.

## MEMORIAL.

*To his Excellency, the President of the United States:*

- The Memorial of the Legislature of the State of Texas, in behalf of sundry citizens whose property was destroyed by the armies of Mexico, during the revolution.

Your memorialists would most respectfully represent unto your Excellency: That, as might have been anticipated, the calamities of the Texian revolution, fell unequally upon particular individuals, and the most exposed sections of the country; that in the line of march adopted by the Mexican armies in 1836, the property of every citizen was seized upon and appropriated by a rapacious soldiery, evincing at every step the wanton ruin incident to barbarian warfare: And after the capture of Santa Anna, and the defeat of his forces by the issue of the battle of San Jacinto, the Mexican government continued to carry on a still more barbarous and unjustifiable warfare, by making predatory incursions into the country: These incursions consisting of frequent and unexpected irruptions, promiscuous plunder and rapid retreats, differed in no respect from those of the savage Indians, by whom we were then surrounded: These had their origin in the basest conceivable motives, to wit: In the desire to gratify their revenge and their rapacity, motives which every civilized nation upon the globe would be ashamed to avow. So unexpected were these descents, and so rapid their retreats, that it was impossible to prepare for their reception or to punish them for the numerous injuries which they wantonly inflicted.

The condition of Texas at the time of annexation, was such as to leave no doubt of her ability to maintain her independence. This was not only conceded, but positively avowed on the part of the United States, during every stage of the negotiations which preceded and led to annexation. It is further apparent, from the implied acknowledgement of Mexico herself, contained in her proffer to acknowledge our separate nationality: And hence it would be but reasonable to conclude, that Texas would ere long have been in a position to force from Mexico the acknowledgement of her independence, and to cause to be inserted,

a stipulation in the treaty of peace providing for the full indemnity of her injured citizens. She divested herself of all these advantages and rights, when she surrendered her separate existence and became a member of the American Union. And since, so far as Texas is concerned, this may be regarded as the same unfinished war; since during its pendency, her sovereignty in a national point of view has merged in that of the United States. Since the latter has assumed the position of the former in relation to it, surely she should feel the same moral obligation resting upon her, to provide for the remuneration of those injured citizens, just as though the war had been carried on from its commencement by the Government of the United States. This, Texas would have had the power to do, and would have been in duty bound to do, had she terminated the war as a separate and independent nation. But the relations of Texas have so changed by annexation, that she can now make no treaty stipulations on the subject; and unless their remuneration is provided for by the government of the United States, they will never be remunerated at all. It would surely not be just to leave unprovided for the meritorious claims of those citizens, who have been longest engaged in the war—who have shared its dangers and borne its calamities.

Aside from these considerations, the inducements held out to Texas, and the obligation assumed on the part of the United States, continued by the correspondence during the pendency of the proffer for annexation, clearly show, that the rights and interests of the Texian sufferers will not be forgotten, nor regarded with indifference by the Executive government of the Union, and especially by your Excellency. Taught by the pledges then given, that those rights would be held sacred and effectually protected, whenever the occasion might arise, your memorialists pray that your Excellency will take into consideration, the subject matter of this memorial, and cause its object to be carried out by proper provisions in the contemplated treaty with Mexico.

*Resolved by the Legislature of the State of Texas, That the Governor be and he is hereby requested to transmit copies of this memorial and resolution, to the President of the United States, and to each of our Senators and Representatives in Congress.*

Approved, March 20, 1848.

## CHAPTER 150.

## An Act to define the boundaries of Travis County.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the boundaries of Travis County shall be extended as follows, to wit: Commencing at a point on the Colorado River, where the dividing line between Bexar and Travis county crosses the same; thence up said River to the mouth of the Red Fork of the Colorado; thence North, fifteen degrees West, to the dividing ridge between the Colorado and the Brazos; thence down the dividing ridge, to the point where the lower line of Bexar County intersects said divide; thence with said line to the place of beginning.

SEC. 2. *Be it further enacted*, That nothing contained in this act, shall effect any location or survey made in Bexar land District.

SEC. 3. This act to be in force from and after its passage.  
Approved, March 20, 1848.

## CHAPTER 151.

## PREAMBLE AND JOINT RESOLUTIONS.

WHEREAS, The State of Texas has never parted with jurisdiction over any of her territory; And whereas, Santa Fe is a part of the integral territory of the State of Texas; And whereas, it is believed the people of Santa Fe have attempted to establish a separate government, which, if the attempt should be successful, would be in direct violation of the rights of Texas: Therefore,

SECTION 1. *Be it resolved by the Legislature of the State of Texas*, That our Senators be instructed, and Representatives requested, to lay this subject before the proper authorities of the United States, and to use their utmost endeavors to have such measures taken by the Government of the United States,

as will secure Texas from any encroachment upon her rights by the people of Santa Fe.

SEC. 2. *Be it further resolved*, That our Senators be further instructed to oppose any treaty with Mexico which may provide for lessening the boundaries of Texas, as established by an act, to define the boundaries of the Republic of Texas, approved December 19, 1836.

SEC. 3. *Be it further resolved*, That the Governor of the State is hereby authorized and required to issue his proclamation to the people of Santa Fe, to organize their county under the laws of the State of Texas; and that he also request the President of the United States, to issue orders to the military officers stationed in Santa Fe, to aid the officers of Texas in organizing the county of Santa Fe, and the eleventh Judicial District of the State of Texas, and in enforcing the laws of this State, if it should be necessary to call upon said officers of the United States, to put down any resistance to the laws of Texas.

SEC. 4. *Be it further resolved*, That the Governor be requested to forward a copy of this preamble and joint resolution, to each of our Senators and Representatives in Congress.

Approved, March 20, 1848.

## CHAPTER 152.

### An Act concerning Crimes and Punishments.

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| 1st. Of offences against the State.                      | 2nd. Of offences against the life or person. |
| 3d. Of offences against property.                        | 4th. Of forgery and counterfeiting.          |
| 5th. Of offences against public justice.                 | 6th. Of offences against public peace.       |
| 7th. Of offences against decency, chastity and morality. | 8th. Of offences against public policy.      |

### OF OFFENCES AGAINST THE STATE.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That if any person owing allegiance to this State, shall levy war or conspire to levy war against the same, or shall in

any way give aid and comfort to the enemies of this State and shall be thereof convicted either upon confession in open Court, or by the testimony of two or more witnesses to the same overt act of treason, for which such party may be indicted, such person shall be adjudged guilty of treason, and shall be punished by death.

Sec. 2. That if any person shall know, that any other person has committed or is intending to commit treason, and shall not within one day from the time of his having such knowledge, give information thereof to the Governor, Judge of some Court of record, or to some Justice of the Peace of this State, he shall on conviction thereof be adjudged guilty of misprison of treason, and shall be punished, by confinement to hard labor in the Penitentiary, not exceeding seven years, or by fine not exceeding two thousand dollars.

Sec. 3. That no person shall be tried for treason or misprison of treason unless the indictment therefor be found within two years next after the commission of the offence.

Sec. 4. That if any public officer being a receiver of public money under any law of this State shall fraudulently convert the same to his own use, or pay or deliver the same to any person knowing that such person is not entitled to receive the same, he shall be punished by confinement to hard labor in the Penitentiary, not exceeding two years, or by imprisonment in the common Jail not exceeding one year and by fine not exceeding two thousand dollars.

#### OF OFFENCES AGAINST THE LIFE OR PERSON.

Sec. 5. That all murder committed by poison, starving, torture or other premeditated and deliberate killing, or committed in the perpetration or in the attempt at the perpetration of arson, rape, robbery or burglary, is murder in the first degree, and all murder not of the first degree is of the second degree. If the Jury shall find any person guilty of murder, they shall also find by their verdict, whether it is of the first or second degree.

Sec. 6. That if any person shall plead guilty to an indictment for murder, a Jury shall be summoned to find the punishment.

Sec. 7. That the punishment for murder in the first degree,

shall be death, and the punishment for murder in the second degree, shall be confinement to hard labor in the Penitentiary, for not less than three years nor more than fifteen years.

SEC. 8. That if any person shall be guilty of manslaughter, he shall be punished by confinement in the Penitentiary to hard labor for a term not less than one year, nor more than ten years.

SEC. 9. That if any person by assault, or by violence and putting in fear, shall feloniously steal, rob and take from the person of another, any money, goods, chattles, or other property which is the subject of larceny, he shall be punished by confinement to hard labor in the Penitentiary for a term not less than one year, nor more than ten years.

SEC. 10. That if any person shall ravish and carnally know any woman committing carnal copulation with her by force against her will, or if any man shall unlawfully and carnally know and abuse any woman child, under the age of ten years, he shall on conviction thereof, be punished by confinement to hard labor in the Penitentiary, for any time not less than one year, and in any prosecution under the provisions of this section, it shall not be necessary to prove emission.

SEC. 11. That if any person with intent to maim or disfigure, shall maliciously cut off an ear, cut out or maim the tongue, cut off or slit the nose or lip, put out an eye, cut off or disable any limb or member, of any person, he shall be punished by confinement to hard labor in the Penitentiary for a term not less than one, nor more than ten years.

SEC. 12. That if any person shall make an assault upon another with intent to commit any crime against the life or person of another which crime has been herein and heretofore described in this act, or shall attempt to commit any such crime, by any means not constituting an assault, he shall be punished by confinement to hard labor in the Penitentiary for a term not less than one year, nor more than ten years.

SEC. 13. That if any woman shall be privately delivered of a child, which if born alive would be a bastard, and shall endeavor privately to conceal its death, and the manner or cause thereof, she shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.

SEC. 14. That the murder of such child and the offence described in the preceding section may be charged in the same

indictment, and the person, accused, may be found guilty of either offence as the evidence may warrant.

SEC. 15. That if any person without lawful authority, shall forcibly confine, or imprison any free person within this State against his will, or shall forcibly carry or send such person out of this State or shall forcibly seize, inveigle or kidnap any person with intent, either to cause to be sent out of the State, against his will, or to be sold, or in any way to be held to service against his will, he shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.

#### OF OFFENCES AGAINST PROPERTY.

SEC. 16. That if any person shall wilfully and maliciously burn any dwelling house or any out building adjoining thereto, or any building whereby any dwelling house shall be burned, he shall be punished by confinement to hard labor in the Penitentiary for a term of not less than three years nor more than fifteen years.

SEC. 17. That if any person shall wilfully and maliciously burn any vessel lying within the body of any county, or any bridge, or any building, other than those described in the preceding section, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than two years nor more than ten years.

SEC. 18. That if any person shall wilfully and maliciously place any obstruction upon the track of any railroad, or remove any rail therefrom, or in any way injure such railroad, or do any other thing thereto, whereby the life of any person may be endangered, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than one year nor more than ten years.

SEC. 19. That if any person shall wilfully and maliciously burn any stack of corn, hay, fodder, grain or flax, or any fence, or any pile of boards, lumber or wood, or any trees, or underwood, of another, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than one year nor more than three years, or by fine not exceeding one thousand dollars, and imprisonment in the common Jail not exceeding one year.

SEC. 20. That if any person shall, in the night time, break and enter any dwelling house, with intent to commit any crime,



the punishment whereof may be death, or confinement to hard labor in the Penitentiary, he shall be punished by confinement to hard labor in the Penitentiary, for a term of not less than five years, nor more than fifteen years.

SEC. 21. That if any person, with intent to commit any crime, the punishment whereof may be confinement to hard labor in the Penitentiary, or to commit larceny, shall in the night time break and enter any office, shop, store or warehouse, or any vessel lying within the body of any county, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than one year, nor more than ten years.

SEC. 22. That if any person, with intent to commit any crime, the punishment whereof may be confinement to hard labor in the Penitentiary, shall in the day time, break and enter any building, or any vessel lying within the body of any county, he shall be punished by confinement to hard labor in the Penitentiary for a term not less than one year, nor more than seven years.

SEC. 23. That if any person shall, in the night time, break or enter, or in the day time, break and enter any dwelling house, or any out house adjoining thereto, any office, shop, store, warehouse, mill, or cotton gin, any meeting house, court house, town house, college, academy, school house, or other building erected for public use, or any vessel lying within the body of any county, and shall therein commit larceny, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less one year, nor more than five years.

SEC. 24. That if any person shall wilfully and maliciously kill, maim, wound, poison, or disfigure any horse, gelding, mare, colt, mule, jack or jenny, cattle, sheep, or swine of another, with intent to injure the owner thereof, the person so offending shall, on conviction thereof, be confined to hard labor in the Penitentiary, for any time not exceeding one year.

SEC. 25. That if any person shall commit any larceny, from the person of another, he shall be punished by confinement to hard labor in the Penitentiary, not less than one year, nor more than seven years.

SEC. 26. That if any person shall steal, take, or carry away any horse, mule, ass, cattle, sheep or goat, the property of another, he shall be punished by confinement to hard labor in the Penitentiary, not less than one nor more than seven years.

SEC. 27. That if any person shall steal, take, and carry

away of the property of another, any money, bank bills, goods, or chattels, or any writing containing evidence of an existing debt, contract, liability, promise, or ownership of property of the value of twenty dollars, or of the receipt, payment or discharge of the like amount, or any writing of a like kind, which shall contain the like evidence, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than one year, nor more than five years.

SEC. 28. That if any person shall steal, take and carry away any property of another, such as is described in the preceding section, of a less amount or value than twenty dollars, he shall be punished by imprisonment in the common jail not exceeding one year, and by fine not exceeding one hundred dollars.

SEC. 29. That if any person shall steal, take and carry away any deed or other writing, importing to contain the conveyance, release, or defeasance of any title to, or interest in, any real estate, or any will, policy of insurance, bill of sale, of any vessel, or letter of attorney, or any writ, process or record of any court of this State, or any public record, or any record of any corporation, public or private, he shall be punished by confinement to hard labor in the Penitentiary, for a term not less than one year, nor more than five years.

SEC. 30. That if any person shall receive or conceal any property stolen as aforesaid, knowing the same to have been so stolen, he shall be punished in the same manner as if he had so stolen the same, and either before or after the conviction of the principal felon.

SEC. 31. That if any person shall fraudulently mortgage, pledge, sell, alienate, or convey, any of his real or personal estate, or shall fraudulently conceal his personal estate to prevent the attachment or seizure of the same upon mesne process, or execution, or to defraud creditors, he shall be punished by imprisonment in the common Jail not less than thirty days nor more than one year, or by fine not exceeding double the value of such estate, or by both of said punishments.

SEC. 32. That if any person shall fraudulently receive any such mortgage, pledge, or conveyance, or shall conceal the property of any debtor, with intent to prevent such attachment or seizure, he shall be punished in the manner provided in the preceding section.

## OF FORGERY AND COUNTERFEITING.

SEC. 33. That if any person shall falsely make or counterfeit, or fraudulently alter any public record, election return, any writ, process, or proceeding, of any Court of this State; any certificate or attestation of a Justice of the Peace, Notary Public, Clerk of any Court, or other public officer, in any matter wherever such certificate or attestation may be received as legal proof, any charter, will, deed, bond, or writing obligatory letter of attorney, policy of insurance, certificate of stock, bill of exchange, promissory note, order, acquittance, discharge for money or property, any acceptance of a bill of exchange, or any endorsement or assignment, of any bill of exchange, or promissory note, any certificate or accountable receipt for money or property, any warrant, order or request, for the payment of money, or the delivery of any property, or writing of value or any writing whatever purporting to contain evidence of the existence, or discharge of any debt, contract or promise, with intent that any person may be defrauded, he shall be punished by confinement to hard labor in the Penitentiary not less than one year, nor more than seven years.

SEC. 34. That any person who shall pass or use, as true, any such counterfeited or altered writing mentioned in the preceding section knowing the same to be such, with intent that any person shall be defrauded, he shall be punished in the manner specified in the preceding section.

SEC. 35. That if any person shall falsely make, or counterfeit or alter any writing not included in the thirty third section, or shall knowingly use the same, with intent that, and whereby, any person may be defrauded, he shall be punished by confinement to hard labor in the Penitentiary for a term not less than one year nor more than three years.

SEC. 36. That if any person shall falsely make or counterfeit, or fraudulently alter, any bank bill, or note, purporting to be issued by any bank, with intent that any person may be defrauded, he shall be punished by confinement to hard labor in the Penitentiary not less than five years, nor more than ten years.

SEC. 37. That if any pass, or offer to pass, as true, or shall bring into the State or have in his possession or custody, any such false counterfeited or altered bank bill, or note described in the preceding section, knowing the same to be so false,

counterfeit, or altered, with intent that any person may be defrauded, he shall be punished by confinement to hard labor in the Penitentiary, not less than one year, nor more than five years.

SEC. 38. That if any person shall make, mend or engrave any plate, block, press, or any tools or instrument, or shall make or provide any paper, or other material adapted or designed for, forging, or making any such false, counterfeited or altered bank bills, or notes described in the two preceding sections, or shall have in his possession any such plate, block, press, tool, instrument, paper or material adapted or designed as aforesaid, with intent to use the same, or cause or permit the same to be used in forging or making such false or counterfeit bank bills, or notes, he shall be punished by confinement to hard labor in the Penitentiary not less than one year, nor more than five years.

SEC. 39. That upon the trial of any indictment, under the three sections next preceding, evidence that bills or notes purporting to be issued by any bank, are commonly received as currency, or other proof of the existence of any bank or banking company, therein described, shall be competent evidence for the jury, of its legal establishment and existence.

SEC. 40. That if any person shall make any false coin in imitation of any gold or silver coin, current within this State by law, or usage, he shall be punished by confinement to hard labor in the Penitentiary not less than five years nor more than ten years.

SEC. 41. That if any person shall pass or offer to pass, as true, or shall bring into this state, or have in his possession, any false and counterfeit coin described in the preceding section, knowing the same to be so false and counterfeit, and with intent that any person may be defrauded, he shall be punished by confinement to hard labor in the Penitentiary, not less than one year, nor more than five years.

SEC. 42. That if any person shall cast, stamp, engrave, make or mend, or shall have in his possession any mould, pattern, die, punch, engine, press, tool, or other instrument designed or adapted for making false, or counterfeit coin, in imitation of any gold or silver coin, current within this State, by law or usage, with intent that the same may be so used, he shall be punished by confinement to hard labor in the Penitentiary, not less than one, nor more than five years.

## OF OFFENCES AGAINST PUBLIC JUSTICE.

SEC. 43. That if any person, being on oath or affirmation, in any legal proceeding, before any court, Justice of the Peace, Referee, Arbitrator, Auditor, or any person authorized by law to administer such oath or affirmation, shall commit perjury, he shall be punished by confinement to hard labor in the Penitentiary, not less than five years, nor more than ten years.

SEC. 44. That if any person, in regard to any matter or thing, wherein he is required by law to make oath or affirmation, shall wilfully swear or affirm falsely, he shall be deemed guilty of perjury and punished accordingly.

SEC. 45. That if any person shall corruptly procure, or attempt to procure another to commit perjury, he shall be deemed guilty of subornation of perjury, and shall be punished in the same manner as for the crime of perjury.

SEC. 46. That if any person shall wilfully assault or obstruct any officer, or other person duly authorized, in the service of any lawful process or order, in any civil case or in any criminal case, the punishment of which is imprisonment in the common jail, and fine, or either, or shall rescue, or attempt to rescue any prisoner, lawfully arrested, in such case, he shall be punished by confinement in the common jail not exceeding one year, and by fine not exceeding three hundred dollars.

SEC. 47. That if any person shall wilfully assault or obstruct any officer, or any person duly authorized, in the service of any criminal process, for any offence punishable by confinement to hard labor in the Penitentiary, for a term of years, or shall rescue, or attempt to rescue any prisoner, lawfully arrested in any such case, he shall be punished by confinement to hard labor in the Penitentiary not exceeding one half of such term.

SEC. 48. That if any person shall wilfully obstruct, or assault any officer or other person, duly authorized in the service of any criminal process, for any offence punishable by death, or confinement to hard labor in the Penitentiary for life, or shall rescue or attempt to rescue any prisoner, lawfully arrested in such case, he shall be punished by confinement to hard labor in the Penitentiary, for not less than five nor more than ten years.

SEC. 49. That if any person shall wilfully obstruct or assault any officer, or person duly authorized, in the discharge of

any duty of his office, in any case not included in the preceding sections, he shall be punished by imprisonment in the common jail, not more than one year.

SEC. 50. That if any person shall convey any tool, or any other thing, into any place of confinement, or afford aid in any manner, with intent that any prisoner may escape therefrom, but without any escape, he shall be punished by imprisonment in the common jail not exceeding one year, and by fine not exceeding one thousand dollars.

SEC. 51. That if any person shall convey any tool, weapon or other thing to any prisoner, convicted of any offence punishable by death, or confinement to hard labor in the Penitentiary, or into any place of confinement, with intent to aid any such convict to escape, he shall be punished by confinement to hard labor in the Penitentiary for not less than one year, nor more than ten years.

SEC. 52. That if any person shall aid in any manner in the escape of any prisoner, committed before or after conviction, to any place of confinement for any criminal offence, not capital, he shall be liable to the same punishment to which such prisoner was, or would have been liable, or to imprisonment in the common jail, not exceeding one year and fined not exceeding two thousand dollars.

SEC. 53. That if any person having the custody of any prisoner, arrested or committed for crime, shall voluntarily permit his escape, he shall be punished in the same manner prescribed in the two next preceding sections, for aiding in the escape of a prisoner, committed for a like cause.

SEC. 54. That if any person shall in any manner assist in the escape of any prisoner committed, before or after conviction, to any place of confinement for any capital offence, he shall be punished by confinement to hard labor in the Penitentiary for any term of years not exceeding fifteen.

SEC. 55. That if any person having the custody of any prisoner, arrested or committed for crime, shall negligently suffer his escape, he shall be fined not exceeding five hundred dollars.

SEC. 56. That if any person guilty of the offence described in either of the four next preceding sections, shall within six months after any such escape of any prisoner, recover and return such prisoner to the place of confinement from which he escaped, cases of rescue excepted, he shall be liable to such

fine as the jury may assess, and imprisonment shall be remitted.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SEC. 57. That if any person shall assault another, or in any way break the peace, upon complaint and conviction thereof, before any Justice or Mayor, of any city or town, he shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days, and shall also recognize with sufficient surety, or sureties, to keep the peace, and be of good behaviour until the next term of the District Court to be holden in the county.

SEC. 58. That if any such offence is of an aggravated nature, the Justice or Mayor may order such offender to recognize, with sufficient surety or sureties, to appear at the District Court next to be holden in the county, and upon conviction of such offender before said court, he may be punished by fine not exceeding two hundred dollars, and imprisoned not exceeding six months in the County Jail, or by either of said punishments.

SEC. 59. That if any person shall be unlawfully, riotously or tumultuously assembled, any Justice, Sheriff, or his deputy, or any Constable, shall approach the rioters as near as he can with safety, and command silence while proclamation is being made, and shall then make proclamation in these or like words: In the name of the State of Texas, every person here assembled is commanded to disperse immediately, and depart peaceably to his home or lawful employment.

SEC. 60. That if any persons shall continue so unlawfully, riotously and tumultuously assembled, after proclamation made by such peace officer as aforesaid, known or openly declared by himself to be such, in making such proclamation, he shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the Common Jail not exceeding one year.

OF OFFENCES AGAINST DECENCY, CHASTITY AND MORALITY.

SEC. 61. That all persons being within the degrees of consanguinity or affinity in which marriages are prohibited, or declared by law to be incestuous, who shall intermarry with or carnally know each other, shall be punished by imprisonment in the com-

mon jail, not exceeding one year, and by fine not exceeding five hundred dollars.

SEC. 62. That if any person not authorized by law, or by a relative or friend for the purpose of re-interment, shall dig up, remove, or convey away any human body, or the remains thereof, or shall conceal the same, knowing it to be so illegally dug up, he shall be punished by confinement to hard labor in the Penitentiary, not exceeding one year, or by fine not exceeding two thousand dollars, and by imprisonment in the Common Jail, not exceeding one year.

SEC. 63. That if any person shall wrongfully destroy, mutilate, deface, injure, or remove any tomb, monument, grave stone, or other structure, in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of any such structure, or any enclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such enclosure, he shall be punished by imprisonment in the Common Jail, not exceeding six months, or by fine not exceeding five hundred dollars, or by both of said punishments.

SEC. 64. That if any person shall wilfully and maliciously kill, maim, beat or wound any horse, cattle, goat, sheep or swine, or shall wilfully injure or destroy any other property of another, he shall be punished by fine, not exceeding one hundred dollars, or by imprisonment in the County Jail, not exceeding ninety days, or by both of said punishments.

#### OF OFFENCES AGAINST PUBLIC POLICY.

SEC. 65. That if any person shall make any lottery, or shall dispose of any estate, real or personal, by lottery, he shall be fined not exceeding five hundred dollars, nor less than fifty dollars.

SEC. 66. That if any person shall sell, dispose of, offer or keep for sale any ticket or part thereof, in any lottery, or shall print or publish any account thereof, or of the place where, or person by whom any ticket therein, or any part of such ticket is kept for sale, or to be otherwise disposed of, he shall be fined not exceeding one hundred dollars, nor less than twenty-five dollars.

SEC. 67. That if any person shall play at any tavern, inn, storehouse, house for retailing spirituous liquors, or any other



public house, or in any street or highway, or in any other public place, or in any out house, where people resort, at any game or games, with cards, upon which money or property, or the representative of either shall be bet, such person or persons so playing shall be deemed guilty of a misdemeanor, and on conviction thereof by indictment, shall be fined in a sum not less than ten, nor more than twenty-five dollars.

SEC. 68. That on the trial of any person or persons for the commission of any offence named in the next preceding section of this act, it shall be sufficient for the indictment to charge, that the person or persons so offending, did play at cards, in any of the places mentioned in the preceding section, without stating what description of game was played, and upon making proof of the charge herein required, it shall be considered that the offence is made out, without proving what the game was.

SEC. 69. That if any person or persons shall exhibit or keep any gaming table, called A, B, C, or E, D, or roulette, rowley powley, or rouge et noir, or shall keep or exhibit a faro bank, monte bank, or any other gaming table, or bank of the like kind, or of any other description under any other name or denomination whatever, or without any name therefor, or shall be in any manner interested or concerned in keeping, exhibiting, or carrying on any such gaming table, bank, or game, at any place whatsoever, each and every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than ten, nor more than one hundred dollars.

SEC. 70. That if any person or persons shall bet or be concerned in betting, at any gaming table, bank or banks mentioned in the preceding section of this act, or at any other gambling device whatever, such person or persons so offending, upon conviction thereof by indictment, shall be fined in any sum not less than ten nor more than fifty dollars.

SEC. 71. That in all prosecutions for offences under the two next proceeding sections of this act, it shall be sufficient for the indictment to charge, that the person or persons indicted, did keep or exhibit a gaming table, or bank for gaming, or was, or were interested or concerned in keeping or exhibiting, or carrying on a gaming table or bank, for gaming without setting forth the manner in which the person or persons was or were interested or concerned, and it shall not be necessary to prove that any money, or any other thing was lost or won, or bet upon

such gaming table or bank, and it shall be sufficient for the indictment to charge, that the person or persons betting upon, or concerned in betting upon such gaming table or bank, did bet, or was, or were concerned in betting upon such gaming table, or bank, describing the gaming table or bank by the proper name, if known, or describing it as a gaming table or bank, the name of which is unknown; and the several District Attorneys of this State, and the Grand Jurors, shall have power, under the direction of the court, to send for persons, and compel their attendance as witnesses, to give evidence of a violation of the two next preceding sections of this act; and such person or persons so made to testify, shall be exempt from liability for any violation of the two next preceding sections of this act, of which he is so compelled to give evidence.

SEC. 72. That if any person shall permit any game, prohibited by the sixty-seventh section of this act, to be played in his or her house, or shall rent any room for such purpose, he or she so offending, shall on conviction be fined not less than ten nor more than twenty-five dollars.

SEC. 73. That no offence or crime committed, and no penalty or forfeiture incurred previous to the time when this act shall take effect shall be affected by this act; except that, when any punishment, forfeiture, or penalty shall have been mitigated by the provisions of this act, such provision shall apply to, and control any judgment to be pronounced after this act shall take effect, for any offence committed before that time; and no prosecution for any offence or crime pending at the time this act shall take effect shall be affected by this act: but the same shall proceed in all respects as if this act had not passed.

SEC. 74. That this act shall take effect from and after the first day of January, one thousand eight hundred and forty-nine: and after that date, all laws and parts of laws conflicting with this act shall be repealed.

Approved, March 20, 1848.

## CHAPTER 153.

An Act supplementary to an act making an appropriation for the Government for the years 1848, and 1849.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That for compensation of the Auditor, the sum of one thousand dollars be, and the same is hereby appropriated, annually.

For compensation of Draftsman, in addition to the sum heretofore appropriated by the act to which this is a supplement, two hundred dollars, annually.

SEC. 2. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved, March 20, 1848.

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CHAPTER 154.

An Act supplementary to an act to organize Justices Courts, and define the powers and jurisdictions of the same, approved 20th day of March, A. D., 1848.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That in all cases where two or more persons are liable to be jointly sued before a Justice of the Peace, such suits may be brought before any Justice of the Peace in the precinct where either of the defendants may reside.

SEC. 2. *Be it further enacted*, That this act shall take effect and be in force on and after the first Monday in August, 1848.

Approved, March 20, 1848.

## CHAPTER 155.

An Act supplementary to an act to provide for ascertaining the debt of the late Republic of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That from and after the passage of this act, the Governor may appoint an Auditor who shall take the necessary oath of office, and perform the duties required by the act to which this is a supplement.

Approved, March 20, 1848.

## CHAPTER 156.

An Act to suppress Illegal Banking.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That any Corporation, Company, or Association of individuals who shall use or exercise banking or discounting privileges in this State, or who shall issue any bill, check, promissory note, or other paper in this State, to circulate as money, without authority of law, shall be deemed guilty of a misdemeanor, and shall be liable to a fine, of not less than two thousand dollars, nor more than five thousand dollars; which may be recovered by a suit in the District Court, in the name of the State.

SEC. 2. *Be it further enacted*, That it shall be the duty of the Attorney General of this State, to institute suit against every Corporation, Company, or Association of individuals in this State, who shall be guilty of a misdemeanor as defined in the first section of this act, which suit shall be instituted in the District Court of the county in which any such Corporation, Company, or Association of individuals may keep their office; and service of a citation upon the officers of any such Corporation, Company, or Association of individuals, shall be a sufficient service; and in any judgment that may be obtained under the provisions of this act, execution may be levied on the estate of the Corporation, Company or Association of

individuals, against whom such judgment may be rendered, and in default of such estate, execution may be levied on the estate of the officers of said Corporation, Company or Association.

SEC. 3. *Be it further enacted*, That in any suit instituted, under the provisions of this act, either party may appeal to the Supreme Court of the State, and no bond or security shall be required of the State in any such appeal.

SEC. 4. *Be it further enacted*, That each and every month, that any Corporation, Company or Association of individuals, shall use or exercise banking or discounting privileges in this State, without authority of law, shall be deemed a separate offence, as defined in the first section of this act; and each and every bill, check, promissory note or other paper, issued by any Corporation, Company, or Association of individuals in this State, to circulate as money, without the authority of law, shall also be deemed a separate offence as defined in said first section.

SEC. 5. *Be it further enacted*, That this act shall take effect and be in force from and after the first day of May, 1848.

Approved, March 20, 1848.

## CHAPTER 157.

An Act to regulate proceedings in the County Court, pertaining to estates of deceased persons.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That wills shall be admitted to probate, and letters testamentary or of administration, shall be granted in the county where the deceased resided, if he had a domicile, or fixed place of residence in the State: If the deceased had no domicile, or fixed place of residence in the State, but died in the State, then either in the county where his principal property was, at the time of his death, or in the county where he died: If he had no domicile, or fixed place of residence in the State, and died without the limits of the State, then in any county in the State where his nearest kin may reside; but if he had no kindred in

the State, then in the county where his principal estate may be situated.

SEC. 2. *Be it further enacted*, That all applications for the probate of wills, and for letters testamentary, or of administration, shall be in writing and filed with the Clerk of the County Court. Upon the filing of any such application, it shall be the duty of the Clerk, to give at least ten days notice thereof, by advertisement posted at the Court House, and at two other public places in the county, not in the same city or town, and proof that such notice has been given, shall be made to the satisfaction of the Court, before any action shall be had on such application.

SEC. 3. *Be it further enacted*, That a written will may be proved by the affidavit in writing, of one of the subscribing witnesses thereto, taken in open Court, and subscribed by the witness. If all the witnesses are non-residents of the county, or those resident in the county are unable to attend the Court, it may be proved by the testimony of any one or more of them, taken by deposition. If none of the witnesses are living, such a will may be probated on proof by two witnesses, of the hand writing of the subscribing witnesses, and also of the testator, if he was able to write; which proof may be either by affidavit taken in open Court and subscribed by the witnesses, or by deposition: If the will was wholly written by the testator, it may be probated on proof by two witnesses of his hand writing, which proof may also be made either by affidavit taken in open Court and subscribed by the witnesses or by deposition; such affidavits or depositions shall be filed in the Court, and, together with the will, shall be recorded by the Clerk; and in any suit that may afterwards be instituted, to contest the validity of any such will, such record shall be evidence, if the witness or witnesses be dead or resident without the county. Any person interested in any such will, may, within four years after it is admitted to probate, institute suit in the District Court to contest its validity: provided that infants, *femes covert*, and persons *non compos mentis*, shall have the like period after the removal of their respective disabilities; and, provided, also, that any such will may be attacked for forgery or any other fraud, at the suit of any heir at law of the testator, or any other person interested in his estate, at any time within four years after the discovery of such forgery or other fraud; and infants, *femes covert*, and persons *non*

*compos mentis*, shall have a like period after the removal of their respective disabilities.

SEC. 4. *Be it further enacted*, That no nuncupative will shall be proved within fourteen days after the death of the testator; nor until those who would have been entitled by inheritance, had there been no will, have been cited to contest the same, if they please; nor shall any such will be probated after six months have elapsed, from the time of speaking the pretended testamentary words, unless the same or the substance thereof shall have been committed to writing within six days after making such will; nor shall any such will be probated unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she hath resided, for ten days next preceding, except when the deceased is taken sick away from home, and dies before he or she returns to such habitation; nor shall any such will be probated unless it be proved by three credible witnesses, that the testator or testatrix called on some person to take notice, or bear testimony that such is his or her will, or words of like import; and whenever any such will may be probated, the evidence of the witnesses shall be committed to writing, sworn to and subscribed, in open Court, by the witnesses, and shall be recorded by the Clerk.

SEC. 5. *Be it further enacted*, That when application is made for the probate of a will, which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, a copy of such will and of the probate thereof, attested by the Clerk of the Court in which such will was admitted to probate, and the seal of the Court annexed, if there be a seal, together with a certificate from the Judge, Chief Justice, or presiding magistrate, as the case may be, that the said attestation is in due form, may be filed and recorded in the Court, and shall have the same force and effect as the original will, if probated in said Court: provided that the validity of such will may be contested in the same manner as the original might have been.

SEC. 6. *Be it further enacted*, That application for the probate of a will, may be made by the testamentary executor, or by any person interested in the estate of the testator.

SEC. 7. *Be it further enacted*, That when application is made for the probate of a will, any person interested in the estate of the testator, may, at any time before trial, file his oppo-

sition thereto, in writing, and on the trial of the matter, all oral testimony shall be taken down in writing and subscribed by the witness or witnesses: copies of all testimony so taken, and also of the testimony of witnesses taken by deposition, shall be admitted in evidence on the trial of the same matter, in any other Court, when taken there by appeal or otherwise.

SEC. 8. *Be it further enacted*, That when a will shall have been probated, it shall be the duty of the Court to grant letters testamentary to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified and are willing to accept the trust, and qualify according to law, within twenty days after such probate.

SEC. 9. *Be it further enacted*, That when any person shall die intestate, or when no executor is named in a will, or when the executor or executors named in a will are disqualified, or shall renounce the executorship, or shall neglect to accept and qualify, within twenty days after the probate of the will, or shall neglect for a period of thirty days, after the death of the testator, to present the will for probate; then, administration of the estate of such intestate or administration with the will annexed of the estate of such testator, shall be granted: *first*, to the surviving husband or surviving wife: *second*, to the next of kin, or the principal devisee or legatee of such intestate or testator, or to some one or more of them; and if none of these apply, or, if applying, they neglect to qualify for a period of twenty days, after the order for their appointment, then to such other proper person or persons as will accept and qualify.

SEC. 10. *Be it further enacted*, That letters testamentary or of administration, shall not be granted to any person who is under twenty one years of age, or of unsound mind, or who has been convicted of any infamous crime; *provided*, however, that such letters may be granted to a surviving husband or wife who may be under twenty one years of age.

SEC. 11. *Be it further enacted*, That when the executor or executors named in a will are under age, and letters of administration, with the will annexed, have been granted to any other person or persons, such letters shall, at any time thereafter, be revoked, on the application of such executor or executors, or any one of them, and letters testamentary issued to such executor or executors, or any one of them, upon proof being made that he or they have attained the age of twenty one



years; and when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, and letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty one years, shall be permitted to qualify and receive letters.

SEC. 12. *Be it further enacted*, That whenever any person named as executor, shall have been absent from the State when the testator died, or when the will was proved, whereby he was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will; or whenever he shall have been prevented by sickness from so presenting the will, or so accepting and qualifying, he shall be allowed to accept and qualify as executor at any time within sixty days after his return to the State, or his recovery from sickness, upon making proof to the Court that he was so absent or so prevented by sickness: And if in the meantime letters of administration with the will annexed, have been granted, such letters shall be revoked; *Provided* he shall have first caused the person to whom letters have been granted to be cited to appear before said Court, and show cause why said letters should not be revoked.

SEC. 13. *Be it further enacted*, That when administration has been granted to any other person or persons than the surviving husband, or surviving wife, of the testator or intestate, upon application being made by him or her, such other person or persons shall be removed from the administration, and letters of administration to such applicant.

SEC. 14. *Be it further enacted*, That when administration has been granted to any other person or persons than the surviving husband or surviving wife, or the next of kin, or the principal devisee or legatee, of the intestate or testator, upon application being made by the next of kin, or the principal devisee or legatee of such intestate or testator or any of them, such other person or persons shall be removed from the administration, and letters shall be granted to such next of kin or principal devisee or legatee or to some one or more of them.

SEC. 15. *Be it further enacted*, That whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided in this act; and

if an executor is named in such will he shall be allowed to accept and qualify in the manner herein provided; but if no such executor be named, or if the executor named be disqualified or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed, of the estate of such testator, shall be granted according to the provisions of this act; and whenever any such executor shall accept and qualify, or whenever any person shall be appointed and qualified as administrator with the will annexed, the letters of administration previously granted shall be revoked; but all acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed, shall be as valid as if no such will had been discovered.

SEC. 16. *Be it further enacted,* That when a will has been admitted to probate, in any of the United States, or the territories thereof, or of any country out of the limits of the United States, and the executor or executors named in such will, have qualified, and a copy of such will, and of the probate thereof, has been filed and recorded in any Court of this State, under the provisions of the fifth section of this act; and letters of administration with such will annexed, have been granted to any other person or persons than the executor or executors therein named, upon the application of such executor or executors, or any one of them, such letters shall be revoked, and letters testamentary shall be issued to such applicant.

SEC. 17. That when application is made for letters of administration, any person may, at any time before the said application is granted, file his opposition thereto in writing; and may apply for the grant of letters to himself or to any other person; and upon the trial, the Court shall grant letters to the person or persons that may seem best entitled to them; having regard to the provisions of this act; without further notice than that of the original application.

SEC. 18. That whenever an estate is unrepresented, by reason of the death, removal, or resignation of the executor or executors, or administrator or administrators, the Court shall grant administration, with the will annexed, of the estate not administered, or administration of the estate not administered, as the case may be, in the same manner and under the regulations herein prescribed for the appointment of original administrators.

SEC. 19. That before the issuance of letters testamentary or of administration with the will annexed, the person named executor or appointed administrator with the will annexed, shall, before the Clerk or Chief Justice, take and subscribe an oath, in form, as follows: *I do solemnly swear, that the writing which has been offered for probate, is the last will of———, so far as I know or believe; and that I will well and truly perform all the duties of executor of the said will or of administrator, with the will annexed, of the estate of the said——— as the case may be.*

SEC. 20. That before the issuance of letters of administration, the person appointed administrator shall, before the Clerk or Chief Justice, take and subscribe an oath, in form as follows: *I do solemnly swear, that———, deceased, died without leaving any lawful will, so far as I know or believe; and that I will well and truly perform all the duties of administrator of the estate of said———.*

SEC. 21. That before the issuance of letters testamentary or of administration, the person named as executor, or appointed administrator, shall enter into bond with at least two good and sufficient sureties, to be approved by, and payable to, the Chief Justice of the County, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate; *Provided*, however, that when any testator shall direct in his will that no security shall be required of the person or persons named therein, as executor or executors, letters testamentary shall be issued to such person or persons without any bond being required.

SEC. 22. That the oath of an executor or administrator may be taken and subscribed or his bond may be given, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will, or the order granting the letters, and all such oaths and bonds, shall be filed and recorded by the Clerk.

SEC. 23. That the following form may be used for the bonds of executors and administrators: *The State of Texas, County of———know all men by these presents, That we, A. B. as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the Chief Justice of the County of———, in the sum of———dollars; for the payment of which well and truly to be made unto the said Chief Justice, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed with our hands, and sealed with our*

*seals; the seals being scrawls; the——day of——, A. D. 18—. The condition of this obligation is such, that whereas the above bound A. B. has been appointed executor of the last will and testament of J. C., deceased, or has been appointed by the Chief Justice of the County of——, administrator, with the will annexed, of the estate of J. C., deceased; or, has been appointed by the Chief Justice of the County of——, administrator of the estate of J. C., deceased, as the case may be: Now if the said A. B. shall well and truly perform all the duties required of him under said appointment, then this obligation shall be null and void; otherwise to remain of full force and effect.*

A. B.	[SEAL.]
C. D.	[SEAL.]
E. F.	[SEAL.]

SEC. 24. That whenever a married woman may be appointed executrix or administratrix, and shall wish to accept and qualify as such, she may jointly with her husband, execute such bond as the law requires; and acknowledge the same before the Chief Justice of the Court where the will was proved, or letters were granted; and such bond shall bind her estate in the same manner as if she were a *feme sole*; and whenever an executrix or administratrix may be a married woman, she and her husband shall act jointly in all matters pertaining to her said representative capacity.

SEC. 25. That whenever a surviving husband or wife, under twenty-one years of age, shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bonds as the law requires, and acknowledge the same before the Chief Justice of the Court in which the will was proved, or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age.

SEC. 26. That whenever an executor or administrator has been qualified in the manner required in this act, it shall be the duty of the Clerk to make out and deliver to such executor or administrator, letters testamentary or of administration, as the case may be, which letters shall be signed by the Chief Justice and attested by the Clerk, with his signature and the seal of the Court; and either said letters or a certificate of the Clerk, with the seal of the court affixed, that such letters have been issued, shall be sufficient evidence of the appointment and

qualification of an executor or administrator, whenever it shall be necessary to make proof thereof.

SEC. 27. That wills shall be probated, and letters testamentary or of administration, with full powers, shall be granted only in open court at a regular term thereof, after application in writing, and notice, as herein before required; but whenever it may appear to the Chief Justice, that the interest of an estate requires the immediate appointment of an administrator, he shall either in open court or in vacation, by writing under his hand and the seal of the court, attested by the Clerk, appoint some proper person administrator *pro tem.*, with such limited powers as the circumstances of the case may require: Such appointment may be made without notice—shall define the powers conferred, and before being delivered to the person appointed, shall be recorded in the minutes of the court, and the Clerk shall endorse thereon a certificate that it has been so recorded, and until such record and certificate are made, the appointment shall not take effect: Such appointment shall cease to be of force on the first day of the term of the court next after the date thereof; unless continued in force by an order entered on the minutes in open court; and *in no case* shall such appointment continue in force beyond the first day of the second term of the court next after the date thereof.

SEC. 28. That pending any contest relative to the probate of a will, or the granting letters of administration, whether such contest be in the County Court, or in any other Court on appeal, it shall be the duty of the Chief Justice to appoint an administrator *pro tem.*, in the manner prescribed in the preceding section, and with such limited powers as the circumstances of the case may require: Such appointment may continue in force until the termination of the contest, and the appointment of an executor or administrator with full powers.

SEC. 29. That before the issuance of letters of administration *pro tem.*, under the provisions of the two preceding sections, the person appointed shall take and subscribe an oath and enter into bond; which bond and oath shall be, in substance, the same as the bond and oath required of other administrators, varying the forms to suit the circumstances of the particular case—and such bond and oath shall be filed and recorded in the like manner as other bonds of administrators.

SEC. 30. That when the sureties upon an executor's or administrator's bond, or any one of them, shall die, or shall re-

move beyond the limits of the State, or shall become insolvent, or when, in the opinion of the Chief Justice, the sureties upon any such bond are insufficient; it shall be his duty, either in termtime or in vacation, to cause a citation to be issued and served upon such executor or administrator, requiring him to appear and give a new bond, on a day named in such citation, which may be in termtime or in vacation.

SEC. 31. That any person interested in an estate may present a petition to the Chief Justice—representing that the bond of the executor or administrator is insufficient—whereupon it shall be the duty of the Chief Justice, either in term time or in vacation, to cause a citation to be issued and served on such executor or administrator, requiring him to appear upon a day named in the citation which may be either in termtime or vacation—and show cause why he should not be required to give a new bond; and, on the return of such citation served, the Chief Justice shall enquire into the truth of the fact alleged, and if satisfied of the insufficiency of the bond, he shall require such executor or administrator to give a new bond.

SEC. 32. That the sureties upon the bond of an executor or administrator, or any one of them, may at any time present a petition to the Chief Justice, praying that such executor or administrator may be required to give a new bond; and that he or they may be discharged from all liability for the future acts of such executor or administrator: Whereupon it shall be the duty of said Chief Justice, whether in termtime or in vacation, to cause a citation to be issued, and served on such executor or administrator, requiring him to appear, on a day named in the citation—which may be either in term time or in vacation—and give a new bond; and whenever such new bond shall have been given, and approved by the Chief Justice, such sureties shall be discharged from all liability under their bond for the future acts of such executor or administrator.

SEC. 33. That in all cases where a new bond shall be required from an executor or administrator, under the provisions of this act, an order to that effect shall be entered in the minutes of the court, naming the time within which such new bond shall be given—and until such new bond shall have been given and approved, the order shall have the effect to suspend the powers of such executor or administrator.

**SEC. 34.** That executors and administrators shall be removed by the Chief Justice, without notice, in term time, by an order entered on the minutes of the court, in the following cases:

1st. When they neglect to qualify in the manner required by this act, within twenty days after the will is probated, or the order is made for the granting of their letters.

2d. When they shall neglect to return to the court, within sixty days after receiving their letters, an inventory of the estate committed to their charge, so far as the same has come to their knowledge.

3d. When they have been required to give a new bond, and neglect to do so within the time prescribed by the court.

4th. When they absent themselves from the State, for a period of three months, without the permission of the court.

**SEC. 35.** That executors and administrators may be removed by the Chief Justice, of his own motion, or on the complaint of any person interested in the estate after being cited to answer such complaint or motion in the following cases:

1st. When they shall fail to make to the court any exhibit that they are required to make, by the provisions of this act; or when they shall fail to comply with any order that the Chief Justice is authorized to make against them, under the provisions of the same.

2d. When there shall appear sufficient grounds to believe that they have; or are about to misapply, embezzle, or remove from the State, the property committed to their charge.

3d. When they are proved to have been guilty of gross neglect, or mismanagement, in the performance of any of their duties.

4th. When they fail to obey any order of the court consistent with this act, in relation to the estate committed to their charge:

In the cases enumerated in this section, on proof being made that the executor or administrator has removed from the State, or otherwise endeavored to elude the service of process, on any such complaint or motion; the same may be heard and determined, though the citation be not served; and in all cases where an executor or administrator is removed, the causes of such removal shall be set forth in the order of removal.

**SEC. 36.** That if any person named as executor, shall have renounced the executorship, or shall have been removed there.

from, he shall not afterwards be appointed administrator of the estate; and whenever any person shall have been removed from the administration of an estate, he shall not afterwards be appointed administrator thereof.

SEC. 37. That if at any time an executor or administrator, shall wish to resign the administration of the estate that has been committed to his charge, he may present to the court from which his letters issued, a full and complete exhibit of the condition of the estate, together with his administration account—both of which shall be verified by affidavit—and also his application in writing for leave to resign: Whereupon it shall be the duty of the Clerk to make out a citation, returnable to some regular term of the court; which citation shall state the presentation of such exhibit, account and application—the term of the court to which it is returnable, and shall require all those interested in the estate to appear and contest such account, if they see proper. Such citation shall be published for at least twenty days in some newspaper printed in the county, if there be one: if not, then by posting copies thereof for a like period at three public places in the county: proof of such publication may be made by the affidavit of the publisher or printer, attached to a copy thereof. At the return term of such citation, or at some other term to which it may have been continued, upon the Chief Justice being satisfied that such citation has been published, or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proofs that may be offered in support of the same, and all objections and exceptions thereto; and shall if necessary, restate such accounts; and shall audit and settle the same. If it shall then appear that such executor or administrator has accounted for all said estate, according to law, the Chief Justice shall order him to deliver the estate, if there be any remaining in his possession, to some person who has given bond for the same, in like manner as herein prescribed for administrators. Upon complying with such order, said executor or administrator shall be permitted to resign his trust and be discharged.

SEC. 38. That whenever letters testamentary, or of administration shall be granted, the Chief Justice shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, and citizens of the county, any two of whom may act, to appraise the estate of the deceased. If from any cause, such appointment be not made; or if the ap-



praisers, or any of them, so appointed, fail or refuse to act, or if, from any other cause, a new appointment is required, the Chief Justice shall by a like order, either in term-time or vacation, appoint another appraiser or appraisers, as the case may require; and in all cases, any two appraisers may act. Such appraisers shall, each, receive two dollars per day, for every day they may be necessarily engaged, and all reasonable expenses.

Sec. 39. That every executor, or administrator, shall, immediately after his appointment, with the assistance of any two or more of the appraisers appointed by the Chief Justice, make, or cause to be made, a full inventory and appraisement of all the estate of the testator or intestate, both real and personal, specifying in such inventory, what portion of such estate is the separate property of the deceased, and what portion, if any, is represented as common property. The appraisement of the property specified in the inventory, shall be sworn to and subscribed by the appraisers making the same, before some officer of the county authorized by law to administer oaths: such executor or administrator shall also make and attach to such inventory, a full and complete list of all claims due or owing to the testator or intestate, specifying what portion of such claims is the separate property of the deceased, and what portion, if any, is common property. Such executor or administrator shall also make and attach to such inventory and list, his affidavit in writing, subscribed and sworn to before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims, of his testator or intestate, that has come to his knowledge.

Sec. 40. That the inventory and list required to be made by the preceding section, shall be returned to the Court by the executor or administrator, within sixty days after the date of his appointment, and may be returned either in term time or vacation; but when returned, it shall be noticed on the minutes of the Court, and shall be recorded by the clerk.

Sec. 41. That whenever other property or claims of the testator or intestate, than such as may be included in the inventory and list which has been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list of such newly discovered property or claims without delay; which said additional inventory and list shall be made, returned and recorded in like man-

ner as original inventories and lists; and any executor or administrator, on complaint of any person interested in the estate, shall be cited by the Chief Justice, and on good and sufficient proof being made, that any property or claims of the estate have not been included in the inventory and list returned, shall be required to make and return an additional inventory and list thereof, in like manner as original inventories and lists.

SEC. 42. That inventories, appraisements, and lists of claims, taken and returned in accordance with the foregoing provisions of this act, may be given in evidence in any suit by or against the executor or administrator, but shall not be *conclusive*, for or against him, if it be shown that there is other property not inventoried; or that there are other claims than those named in such lists; or that the property, or any part thereof was *bona fide*, sold for more or less than the appraisement; or was not separate or common property, as specified in such inventories and lists.

SEC. 43. That, when any inventory and appraisement has been returned in the manner herein before provided, any person interested in the estate, who may deem such appraisement to be unjust or erroneous, may apply to the Chief Justice for a new appraisement, notice of which application, together with a citation, shall be served on the executor or administrator, requiring him to appear at a regular term of the Court, and show cause why a new appraisement should not be made. On the return of such citation served, the Chief Justice shall enquire into the truth of the facts alleged, and, if satisfied that such appraisement was manifestly unjust or erroneous, shall appoint other appraisers, and order a new appraisement, to be made and returned in like manner as original appraisements. When such new appraisement is made and returned, it shall be recorded, and shall stand in place of the original appraisement, which shall be as if never made: *Provided*, That not more than one re-appraisement shall be made.

SEC. 44. That at the first term of the Court, after the original grant of letters testamentary, or of administration, it shall be the duty of the Chief Justice to fix the amount of an allowance to be made for the support of the widow and minor children, if there be either or any, of the deceased, which allowance shall be of an amount sufficient for their maintenance for the term of one year, and shall be paid by the executor or administrator to the widow, if there be one; if not, then to the guardian of the child

or children, either in money out of the first funds of the estate that may come to his hands, or in such personal effects of the deceased as such widow or guardian may choose to take at the appraisement, or a part thereof in each, as they may select. If there be no personal effects of the estate that such widow or guardian are willing to take for such allowance, or not a sufficiency of them; and if there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, then it shall be the duty of the Chief Justice, so soon as the inventory and list of claims are returned, to order a sale of so much of the estate, for cash, as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require: *Provided, however,* That when any such widow and minor children shall have separate property adequate to their maintenance, then no such allowance shall be made as is provided for in this section.

SEC. 45. That at the first term of the Court after an inventory and list of claims have been returned, it shall be the duty of the Chief Justice to set apart, for the use and benefit of the widow and children, if there be either or any, of the deceased, all such property as may be exempted from execution or forced sale by the Constitution or Laws of the State, with the exception of any exemption of one year's supply of provisions; and in case there should not be among the effects of the deceased, all or any of the specific articles so exempted, it shall be the duty of the Chief Justice to make an allowance in lieu thereof to the widow and children, or such of them as there be, which allowance shall be paid by the executor or administrator, either in money out of the first funds of the estate that may come to his hands, or in any property of the deceased that such widow or children may choose to take at the appraisement, or a part thereof in both as they may select. If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, it shall be the duty of the Chief Justice, on the application of such widow or children, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof as the case may require. Such allowance shall be paid in the following manner: If there be a widow and no children, the whole to be paid to the widow:

If there be a child, or children, and no widow, the whole to be paid to such child, or to be equally divided among such children: If there be a widow and a child, or children, one-half to be paid to the widow, and the other half to such child, or to be divided equally among such children: *Provided*, That, if the estate of such decedent be not insolvent, nothing in this section contained, shall be so construed as to prohibit the distribution and partition of said estate among the heirs and distributees thereof, including the portion herein provided, to be set aside for the use of the widow and children; *And, further provided*, That a year's provision shall be exempted from such distribution.

SEC. 46. That it shall be the duty of executors and administrators, within one month after receiving their letters, to publish in some newspaper printed in the county where the letters were issued, if there be one; if not, then in some newspaper printed in the State, and nearest the court house of the county where the letters were issued, a notice requiring all persons having claims against the estate of the testator or intestate, to present the same within the time prescribed by law, which notice shall state the time of the original grant of letters testamentary or of administration, and shall be published once a week for six successive weeks: when no newspaper is printed in the county, a copy of such notice shall also be posted at the court house. A copy of such printed notice, together with the affidavit of the publisher of the paper, that it was published once a week for six successive weeks, sworn to and subscribed before any Chief Justice, or Notary Public, and attested by his official seal, may be filed and recorded in the Court from which the letters were issued; and a copy thereof may be given in evidence in any Court, in any action, whether by or against the executor or administrator; and a copy of the notice posted at the court house, with a certificate of the clerk that such notice was so posted, may be filed and recorded, and a copy thereof given in evidence in the like manner as provided for the printed notice.

SEC. 47. That every claim for money against a testator or intestate, shall be presented to the executor or administrator, within twelve months after the original grant of letters testamentary or of administration; or the payment thereof shall be postponed until the claims which have been presented within said twelve month and allowed by the executor or ad-

ministrator, and approved by the Chief Justice, or established by suit shall have been first entirely paid.

Sec. 48. That if any executor or administrator fail to give the notice required by the 46th section of this act, to be given, he shall be removed by the Chief Justice at any regular term of the Court, on the complaint of any person interested in the estate, after being cited to answer such complaint, unless such executor or administrator shall show to the Court that he has given such notice.

Sec. 49. That no executor or administrator shall allow any claim for money against his testator or intestate, nor shall any Chief Justice approve of any such allowance, unless such claim is accompanied by an affidavit, in writing, that the claim is just, and that all legal offsets, payments and credits, known to the affiant, have been allowed; which affidavit, if made in the county where the letters were granted, may be made before any officer of the county authorized to administer oaths: if made in any other county of this State, it shall be made before some Chief Justice, or Notary Public, and shall be attested by his official seal: if made out of this State, it shall be made before some Judge of a Court of Record having a seal, and shall be attested by the seal of his Court. If any such claim is allowed or approved without such affidavit, such allowance or approval shall be of no force or effect.

Sec. 50. That no holder of a claim for money against the estate of a deceased person, shall bring a suit thereon against the executor or administrator, unless such claim properly authenticated, has been presented to such executor or administrator, and he has refused to allow such claim for the whole amount, or a part thereof; or unless such claim has been presented to the Chief Justice, and he has disapproved of the allowance made by the executor or administrator, or a part thereof. In any suit that may be brought by the holder of any such claim, if he fails to recover thereon a greater amount than has been allowed by the executor or administrator, or than has been approved by the Chief Justice, he shall be liable for all costs of such suit.

Sec. 51. That when any claim for money against an estate shall be presented to the executor or administrator, if the same be properly authenticated, in the manner required by this act, he shall endorse thereon, or annex thereto, a memorandum in writing, signed by him, stating the time of its pre-

sentment, and, that he allows or rejects the claim; or what portion thereof he allows, or rejects, as the case may be. If the claim, or a part thereof be allowed by the executor or administrator, it shall then be presented to the Chief Justice, either in term time or vacation, who shall endorse thereon, or annex thereto, a memorandum in writing, signed by him, stating that he approves or disapproves of such allowance, or what portion of such allowance he approves or disapproves of: If all, or any portion of the claim be so allowed and approved, the holder thereof shall be entitled to receive payment of the amount so allowed and approved, in due course of administration. - If such claim be rejected by the executor or administrator, either for the whole amount, or a part thereof, or if the allowance or any part thereof made by the executor or administrator be disapproved of by the Chief Justice, the holder of such claim may, within three months after such rejection by the executor or administrator, but not thereafter, bring a suit against the executor or administrator for the establishment thereof, in any Court having jurisdiction of the same; and on the trial of such suit, the memorandum in writing of the executor or administrator, or of the Chief Justice, endorsed on, or annexed to, such claim, may be given in evidence to prove the facts therein stated, without proof of the handwriting of such executor or administrator, or Chief Justice, unless the same be denied under oath. No execution shall issue on a judgment obtained by the plaintiff in any such suit; but such judgment shall have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the Chief Justice.

SEC. 52. That when a claim for money against the estate of a deceased person, authenticated in proper form, shall be presented to the executor or Administrator within the time prescribed by law; if such executor or administrator fail or refuse to endorse thereon or annex thereto a memorandum in writing, as the previous section requires, such failure or refusal shall be deemed equivalent to a rejection of the claim by executor or administrator; and shall authorize the holder to bring a suit for the establishment thereof; in like manner as if such claim had been so rejected; and such executor or administrator shall be removed by the Chief Justice at any regular term of the Court on the complaint of any person interested in such claim, after being cited to answer such complaint, and proof being made of such failure or refusal.

**SEC. 53.** That when any person shall sell property and enter into bond, or other written agreement, to make title thereto, and shall depart this life without having made such title, the holder of such bond or written agreement, or his legal representative, may file a complaint in writing in the County Court of the County where letters testamentary or of administration, of such deceased person, were granted, praying that the executor or administrator may be required to make titles, agreeably to the title bond, or other written agreement of the deceased: whereupon, it shall be the duty of the Clerk of said Court to issue a citation with a copy of the complaint, to be served on the executor or administrator, and on the return thereof served, at some regular term of the Court, the Chief Justice shall, if he find that such sale was legally made, order the executor or administrator to make titles, according to the tenor of the bond, or other written agreement, to the property so sold by his testator or intestate: whereupon, it shall be the duty of such executor or administrator to make titles, in compliance with such order; *provided* however, that any person interested in such estate may, at any time within two years after the making of any such order, have the same annulled and set aside by a suit in the District Court, upon good cause shown why the same should not have been made; *provided* also, that married women, minors, and persons of unsound mind, so interested, shall have a like period of two years, after the removal of their respective disabilities, within which they may in like manner have such order annulled and set aside.

**SEC. 54.** That it shall be the duty of every executor, or administrator, so soon as he shall ascertain that it is necessary to apply to the Chief Justice, at some regular term of the Court, for an order to sell so much of the property of the estate he represents, as he shall think sufficient to pay the expenses of administration, and the debts of the estate; such application shall be in writing, and shall be accompanied by a statement in writing, of the estimated expenses of administration; and of all the claims against the estate that have been presented to him, specifying what claims have been allowed by him, what rejected, and those upon which suit has been instituted against him; with the condition of such suit or suits; which statement shall be verified affidavit, upon the presentation of such application and statement, it shall be the duty of the Chief Jus-

tice, if satisfied that there is a necessity for such sale to order the same to be made.

Sec. 55. That when any executor or administrator shall neglect to apply for an order to sell sufficient property of the estate he represents, to pay the expenses of administration and the claims against the estate that have been allowed and approved, or established by suit; such executor or administrator shall be required by the Chief Justice, on the application in writing of any creditor of the estate, whose claim has been allowed and approved or established by suits or any heir, devisee, or legatee of the deceased, to present to the Court at some regular term thereof a statement in writing, like that provided for in the preceding section; and upon proof to the Court, by any such creditor, heir, devisee, or legatee, that a necessity exists for a sale, to pay the expenses of administration and the debts of the estate, it shall be the duty of the Chief Justice to order such sale to be made; *provided* the executor or administrator shall have been first cited.

Sec. 56. That whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon the application in writing of the executor or administrator, or any heir, devisee, or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved, or established by suit, the Chief Justice, by an order entered on the minutes of the Court, either in term time or in vacation, may direct the sale of such property, or any part thereof.

Sec. 57. That the Chief Justice, either in term time or in vacation, may, by an order entered on the minutes of the Court, direct the crops belonging to the estate of the deceased person, or any part thereof, to be sold at private sale, upon the application in writing of the executor or administrator, or any heir, devisee, or legatee of the deceased; or any creditor of the estate, whose claim has been allowed and approved, or established by suit; *provided* that no crops shall be sold under any such order at a price less than their fair or market value.

Sec. 58. That all sales for the payment of the debts owing by the estate, shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold; *provided* however, that no order shall be made to sell the slaves belonging to an estate, for the purpose aforesaid, until all other property subject to the payment of debts has been first sold;



and it shall be shown to the Court that the proceeds of such sales are insufficient to pay such debts, unless it shall be necessary to sell such slaves, or a part thereof, for the satisfaction of some debt that is secured by mortgage or other lien, on them; or unless such estate shall, by the exhibit of the executor, or administrator, or by other evidence satisfactory to the Court, appear to be insolvent.

SEC. 59. That any creditor of the estate of a deceased person holding a claim secured by a mortgage, or other lien, which claim has been allowed and approved, or established by suit, may obtain, at a regular term of the Court, from the Chief Justice of the County where the letters testamentary or of administration were granted, an order for the sale of the property upon which he has such mortgage, or other lien, or so much of said property as may be required to satisfy such claim, by making his application in writing, and having a copy thereof served upon the executor or administrator, with a citation requiring him to appear and answer such application.

SEC. 60. That when an application is made to the Chief Justice for an order to sell any property belonging to the estate of a deceased person, for the payment of debts; any person interested in such estate, may, at any time before an order is made thereon, file his opposition in writing to such sale; or may make application in writing for the sale of other property of the estate; and upon the hearing of the matter in controversy, the Chief Justice shall make such order thereon as the circumstances of the case may require, having due regard to the provisions of this act.

SEC. 61. That whenever any property of an estate is ordered to be sold by the Chief Justice, such order shall be entered on the minutes of the Court; shall describe the property to be sold, and shall specify the terms of such sale.

SEC. 62. That sales of personal property, other than slaves, for the payment of debts, may be ordered either for cash or on such credit as the Chief Justice may direct; and all sales of land or slaves, for the payment of debts, shall be made on a credit of twelve months; except when such sales are ordered to raise the amount of the allowance that may be made under the provisions of the forty fourth and forty fifth sections of this act, or for the satisfaction of a mortgage, or other lien, on said land or slaves; in which cases, such sales shall be made on such terms as the Chief Justice may direct.

SEC. 63. That all sales ordered by the Chief Justice shall be made to the highest bidder, and at public auction; unless otherwise directed by the will of the testator, or otherwise ordered by the Chief Justice under some provision of this act.

SEC. 64. That whenever in a will, power is given to an executor to sell any property of the testator, no order of the Chief Justice shall be necessary to authorize the executor to make such sale; and when any particular directions are given by a testator in his will, respecting the sale of any property belonging to his estate, the same shall be followed, unless creditors or heirs may thereby be prejudiced in their rights.

SEC. 65. That whenever a public sale of property is ordered under the provisions of this act, if the same be personal property other than slaves, it shall be advertised at least ten days before the day of sale; if the same be land or slaves, it shall be advertised at least twenty days before the day of sale. The manner of advertising shall be by posting a notice of such sale at the court house, and at two other public places in the county where the sale is to be made, but not in the same city or town. All such public sales shall be made within the hours of 10, A. M., and 4, P. M.; in case the day set apart for such sale shall be insufficient to complete the same, such sale may be continued from day to day, by giving public notice of the continuance, at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. All such public sales of personal property other than slaves, shall be made at such time and place as may be directed by the Chief Justice in the order of sale: all such public sales of land or slaves shall be made on the first Tuesday of the month, at the court house door of the county where the letters testamentary or of administration were granted; unless the Chief Justice shall deem it to the advantage of the estate to order the sale in the county in which the property is situated; and in all cases where such public sale is ordered to be made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties.

SEC. 66. That when any person shall bid off property offered for sale, rent or hire, at public auction by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be re-advertised and sold, rented or hired, and the person so failing to comply, shall

be liable to pay to such executor or administrator, for the use of the estate, five per cent. on the amount of his bid—and, also, the deficiency in price on the second sale, renting or hiring if any such deficiency there be to be recovered by such executor or administrator, by action brought before a Justice of the Peace, or in the District Court, according to the amount of such penalty or deficiency.

SEC. 67. That when a sale of property is ordered under the provisions of this act, it shall be the duty of the executor or administrator to make such sale, or cause it to be made in obedience to the order, at the earliest period; and when such sale has been made, it shall be the duty of the executor or administrator, to return to the court that ordered the sale, an account thereof—either in term-time or vacation—within thirty days after the day of sale. Such account of sale shall be in writing—shall specify the property sold—the name of the purchaser—the price for which it was sold, and the terms of sale; and shall be sworn to and subscribed by such executor or administrator, before some officer authorized to administer oaths—whenever such account of sale is returned, such return shall be noted in the minutes of the court; and at the term of the court when it is returned or if returned in vacation at the first term thereafter, it shall be the duty of the Chief Justice to enquire into the manner in which such sale was made; and if satisfied that it was fairly made and in conformity with law, he shall cause to be entered on the minutes of the court a decree confirming it, and ordering the account of sales to be recorded by the Clerk, and a conveyance to be made to the purchaser of either land or slaves, by the executor or administrator; if not satisfied that such sale was so made, he shall cause to be entered in like manner, a decree setting it aside and ordering a new sale to be made. After any such decree of confirmation shall have been made, upon the purchaser complying with the terms of sale, the executor or administrator shall execute and deliver to him a conveyance of the property so sold, if it were either land or slaves, reciting therein the decree confirming the sale, and ordering the conveyance to be made; which conveyance of land or slaves so made, shall vest the right and title that the testator or intestate had, in the purchaser; and shall be *prima facie* evidence that all the requisites of the law have been complied with in making the sale; and such decree of confirmation of the sale of personal property other than slaves, shall in like manner vest the right

and title thereof in the purchaser, and shall be like evidence that all the requisites of the law have been complied with in making the sale of such personal property.

SEC. 68. That it shall not be lawful for any executor or administrator to take the estate of his testator or intestate, or any part thereof at its appraised value; or to sell the same or any part thereof unless under the directions of the will or the order of the Chief Justice under the provisions of this act; or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and if any executor or administrator, should either directly or indirectly, become the purchaser of any of the property of his testator or intestate, at a sale made by him, upon the complaint of any person interested in the estate and service thereof; and of citation on such executor or administrator, such sale shall be declared void by the Chief Justice, and such executor or administrator, decreed to hold the property so purchased in trust as assets of the estate. Nor shall it be lawful for any executor or administrator, either directly, or indirectly, to purchase for his own use any claim against the estate he represents; and if any executor or administrator, should purchase any such claim, upon the complaint in writing of any person interested in the estate and service thereof, with a citation on such executor or administrator—he shall be decreed by the Chief Justice to hold such claim in trust for the use of the estate; and he shall only be entitled to receive from the estate the amount he shall prove to have been paid by him therefor—such amount to be paid *pro rata* with other creditors of an equal degree.

SEC. 69. That it shall be the duty of every executor or administrator, to take such care of the property of his testator or intestate, real and personal, as a prudent man would take of his own property, and if there be any buildings or houses belonging to the estate, it shall be his duty to keep the same in tenantable repair—extraordinary casualties excepted: and all reasonable expenses incurred by the executor or administrator, in taking such care of the property, or in making such repairs, on sufficient proof thereof, shall be allowed him by the Chief Justice.

SEC. 70. That after the return of the inventory, if there be at any time in the possession of the executor or administrator, a plantation or slaves belonging to the estate, or any other property that may be rented or hired, so as to produce an income to the estate, and the disposition thereof is not specially directed

by the will of the testator, or by the provisions of this act, or if the same is not required to be at once sold for the payment of debts, or claims of any kind against the estate, it shall be the duty of the executor or administrator to apply to the Chief Justice for an order to carry on such plantation, or to rent the same and hire out the slaves, and to rent or hire such other property for the benefit of the estate. Upon such application being made, it shall be the duty of the Chief Justice either in term-time or vacation to make an order for such executor or administrator, either to carry on such plantation or to rent the same, and hire out the slaves, as to the Chief Justice shall appear most for the interest of the estate—and to hire or rent such other property. Such order shall be entered on the minutes of the court, and in making the same, the chief Justice shall take into consideration the condition of the estate, and the necessity that may exist, for future sales of such property for the payment of debts or claims of any kind against the estate; and shall not extend the time of carrying on such plantation or for renting or hiring any of the property, beyond what may consist with the speedy settlement of the estate: In carrying on a plantation, or in renting or hiring any such property under such order, all reasonable expenses incurred by the executor or administrator, shall be allowed by the Chief Justice on proper proof thereof; and if any executor or administrator shall fail to make such application, or to obey any such order when made, he, and his sureties on his bond, shall be liable, at the suit of any person interested in the estate, for the use and benefit of the estate, for such amount as might have reasonably been produced by carrying on such plantation, or by renting or hiring such property.

SEC. 71. That whenever any property is rented or hired by an executor or administrator, under the provisions of this act, such renting or hiring shall be made at public auction to the highest bidder, after having given at least ten days notice thereof, by posting a copy of such notice at the court house, and at two other public places in the county where the same is to take place.

SEC. 72. That whenever an executor or administrator sells property of the estate he represents, on a credit, either under the directions of the will of the testator, or under an order of the Chief Justice, he shall take the note of the purchaser for the amount of his purchase, with good personal security; and if land or slaves have been sold, he shall also take a mortgage

upon the property sold, to secure the payment of the purchase money. And if the executor or administrator shall neglect to take such note, security and mortgage, he, and the sureties on his bond, shall be liable at the suit of any person interested in the estate, for the use of the estate, for the amount of such sales; and whenever any executor or administrator shall rent or hire any property of his testator or intestate, on a credit under the provisions of this act, he shall take the note of the person hiring or renting such property, for the amount of the hire or rent, with good personal security, and if he shall fail to take such note, and security, he and his sureties shall in like manner be liable for the amount thereof.

SEC. 73. That every executor or administrator shall use ordinary diligence to collect every claim due to the estate he represents; and to recover possession of all property to which the estate has a right; *provided* there is a reasonable prospect that such claim can be collected, or such property recovered; and if any executor or administrator shall neglect to use such diligence, he, and his sureties on his bond, shall be liable at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims, and the value of such property as may have been lost by his neglect to use such diligence.

SEC. 74. That if there be more than one executor or administrator named in the letters, any one or more of them, on the neglect of the rest, may return an inventory as required by this act; and the executor or administrator so neglecting, shall not thereafter interfere with the estate, or have any power over the same; but the executor or administrator so returning, shall have thereafter the whole administration—unless within two months after the return, the delinquent or delinquents shall assign to the court some reasonable excuse which it shall deem satisfactory.

SEC. 75. That the naming an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases when an executor or administrator, may be indebted to his testator, or intestate, he shall account for the debt in the same manner as if it were so much money in his hands: *provided, however*, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due.

SEC. 76. That whenever an executor or administrator shall think it will be for the interest of the estate he represents, to purchase any property, or take any claims for the use and ben-

efit of the estate in payment of any debt due to the estate, he may present a petition to the Chief Justice at a regular term of the Court, representing these facts; and if the Chief Justice shall be satisfied that it will be for the interest of the estate to purchase such property, or to take such claims, he may make a decree authorizing such executor or administrator to make such purchase either at public or private sale, or to take such claims for the use and benefit of the estate.

SEC. 77. That when the mortgagee of any property shall die, the executor or administrator of such mortgagee shall be, and he is hereby authorized, on receiving from the mortgagor, or any person for him, the amount due to the estate he represents, to release to the mortgagor the legal title to such mortgaged property, and such release shall be valid.

SEC. 78. That the debts due from an estate shall be paid by the executor or administrator in the following order:

1st. Funeral expenses and expenses of last sickness.

2nd. All expenses of administration, including the allowance that may be made under the provisions of the forty fourth and forty fifth sections of this act; and the expenses incurred in the preservation, safe keeping and management of the estate.

3d. Debts secured by mortgage, or having a lien, whether by judgment or execution, or otherwise; so far as the same can be paid out of the proceeds of the property subject to such mortgage or lien; and when more than one of such mortgages and liens, or any of them exist upon the same property, the oldest shall be first paid.

4th. All other debts, and no preference shall be given to debts secured by mortgage, or having a lien by judgment, execution or otherwise, further than regards the property subject to such mortgage or lien. When there is a deficiency of assets, debts of the fourth class shall only be paid *pro rata*; and no executor or administrator shall be allowed to pay any claims of the fourth class, whether the estate is solvent or insolvent, except with their *pro rata* amount of the funds of the estate that have come to hand.

SEC. 79. That executors and administrators shall be entitled to receive, and may retain in their hands, *five per cent.* upon the sums they may actually receive in cash; and the same upon all sums they may pay away, in cash, in the course of their administration. All reasonable expenses incurred by an exec-

utor or administrator in the preservation, safe keeping and management of the estate, and all reasonable attorneys' fees that may be incurred in the course of the administration, shall be allowed by the Chief Justice, on proof that there was a necessity therefor. Whenever in the opinion of the Chief Justice, the commission upon the sums received, and paid away, is not sufficient compensation for his services; or if, from the circumstances of the estate, extraordinary services were required to be rendered, the Chief Justice shall allow such further compensation as may seem reasonable.

SEC. 80. That executors and administrators, whenever they have funds in their hands belonging to the estate they represent, shall pay,—

1st. The funeral expenses and expenses of last sickness.

2d. Expenses of administration, including the allowance that may be made under the provisions of the forty fourth and forty-fifth sections of this act; and the expenses incurred in the preservation, safe keeping and management of the estate, when such claims have been allowed, and approved, or established; and if they shall fail or refuse so to do, when required by the holder of such claims, the person holding any such claim may obtain an order from the Chief Justice at a regular term of the Court, directing such payment to be made, upon making proof that such executor or administrator has funds of the estate in his hands, sufficient to make such payment, and fails or refuses to make it: *provided*, such executor or administrator shall have first been cited on the complaint of the holder of such claim, to appear and show cause why such order should not be made.

SEC. 81. That whenever any executor or administrator shall have in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage, or other lien, and such proceeds or any part thereof are not required for the payment of any debts against the estate, that have a preference over such mortgage or other lien, it shall be the duty of such executor or administrator immediately to pay over such proceeds or so much thereof as may not be required for the payment of any debts against the estate that have a preference over such mortgage or other lien, to the creditor or creditors having a right thereto; and if any executor or administrator shall fail or refuse so to do, such creditor or creditors upon proof thereof, may obtain an order from the Chief Justice, in



like manner as is provided in the preceding section, directing such payment to be made.

SEC. 82. That at the first term of the Court after the expiration of twelve months from the time of the original grant of letters testamentary or of administration, it shall be the duty of the executor or administrator to return to the Court, an exhibit, in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after the said grant of letters testamentary or of administration, specifying which have been allowed by him; which have been rejected, and the date when rejected which have been sued upon, and the condition of the suit; also, setting forth, fully, the condition of the estate; and if any executor or administrator shall neglect to return such exhibit at the term of the Court named above, it shall be the duty of the Chief Justice to revoke his letters; either in term time or in vacation, on the complaint of any person interested in the estate, without notice to such executor or administrator.

SEC. 83. That upon the return of the exhibit mentioned in the preceding section of this act, if it shall appear therefrom, or by any other evidence, that the estate is solvent; taking into consideration, as well the claims presented before the expiration of twelve months from said granting of letters testamentary or of administration, on which suit has been, or can yet be instituted; as those so presented, allowed and approved, or established by judgment; and that the executor or administrator has in his hands sufficient funds for the payment of all the aforesaid claims, it shall be the duty of the Chief Justice to order immediate payment to be made, of all the claims allowed and approved or established by judgment: If he has funds in his hands, but not sufficient for the payment of all the said claims; or if the estate be insolvent, and he has any funds in his hands, it shall be the duty of the Chief Justice to order such funds to be applied to the payment of all claims, having a preference in the order of their priority, if they or any of them be still unpaid; and then to the payment, *pro rata*, of the other claims allowed and approved or established; taking into consideration, also, the claims that were presented within the twelve months, and in suit, or on which suit may yet be instituted.

SEC. 84. That at the third regular term of the Court after the expiration of twelve months from the original grant of let-

ters testamentary or of administration, it shall be the duty of the executor or administration, to return to the Court a further exhibit in writing, sworn to and subscribed by him, setting forth a list of all suits that have been instituted against him since the return of the exhibit required by the eighty second section of this act; the condition of such suits, and all suits previously instituted; specifying which of said suits are upon claims presented to him within twelve months after such grant of letters; and which, upon claims presented after the twelve months: also setting forth a list of all claims that have been presented to him since the expiration of the twelve months from said grant of letters; specifying which have been allowed by him, and which have been rejected, with the date of the rejection. And he shall also, from time to time after the said term, return to the Court a further exhibit under oath, setting forth a list of all claims presented to and allowed or rejected by him since the return of his former exhibit, with the date of the rejection; and, also, of all suits instituted against him, and all judgments rendered upon suits against him, since his former return. And any executor or administrator who shall fail to return to the Court any exhibit as required by this section, shall be removed by the Chief Justice without notice, either in term time or vacation; on the complaint of any person interested in the estate.

SEC. 85. That claims for money against the estate of a deceased person, which may be presented to the executor or administrator after the expiration of twelve months from the original grant of letters testamentary or of administration, and allowed by him, and approved by the Chief Justice, or established by suit, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands, over and above what may be sufficient to pay all debts of every kind against the estate, that were presented within the twelve months and allowed and approved, or established by suit, or that may be so established, and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the Chief Justice in like manner as is provided in this act, for creditors to obtain orders of payment.

SEC. 86. That at the third regular term of the Court after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the

Court after that, any person interested in the estate may, by complaint in writing, filed in the County Court, cause the executor or administrator to be cited to appear at a regular term of the Court, and make an exhibit in writing, under oath, to the Court; setting forth, fully, in connexion with the previous exhibits, the condition of the estate he represents; and if it shall appear to the Court by said exhibit, or by other evidence, that such executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, it shall be the duty of the Chief Justice to order the same to be paid out to them according to the provisions of this act: or any executor or administrator may voluntarily present such exhibit to the Court, and if he has any funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

SEC. 87. That at any time after the first term of the Court, after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by their complaint in writing, filed in the County Court, cause the executor or administrator, and the heirs, devisees or legatees of the estate, to be cited to appear at a regular term of the Court, and show cause why a partition and distribution should not be made among the heirs, devisees or legatees of the residue of the estate; if any there be after retaining in the hands of the executor or administrator a sufficient portion thereof to pay all debts of every kind against the estate, that have been allowed and approved, or established by suit, or that have been rejected by the executor or administrator, or not approved by the Chief Justice, and may yet be established. And if it shall appear, to the Chief Justice, after the service of such citation that there is any such residue of the estate, he shall order it to be so partitioned and distributed.

SEC. 88. That no claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made as provided for in the previous section of this act; but the holder of any such claim not barred by the laws of limitation, shall have his action thereon against the heirs, devisees or legatees of the estate; but they shall not be bound beyond the value of the property they may receive in such partition and distribution.

SEC. 89. That when all the debts known to exist of every kind against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator will permit, the executor or administrator of such estate may present his account to the Court, verified by affidavit for settlement; or, the Chief Justice shall cause him to be cited to present such account, either of his own motion, or on the complaint of any person interested in the estate. Upon the presentation of such account, it shall be the duty of the Chief Justice, either in term time or in vacation, to order at least twenty days notice to be given by publication in a newspaper, if there be one printed in the county; if not, then by posting such notice at the court house, and at two other public places in the county, for at least twenty days: such notice shall state the presentation of said account, the term of the Court when it will be acted on, and shall require all persons interested to appear and contest said account, if they see proper. The Chief Justice may order such other notice to be given as he shall deem expedient. At the term of the Court named in such notice, or at some subsequent term to which the same may be continued, upon proof being made that notice has been given in the manner required by this act, and the order of the Chief Justice, it shall be his duty, after examining said account with all the exceptions thereto, and hearing the evidence that may be offered in support of, or against, said account and exceptions, to re-state said account if necessary, and to audit and settle the same; and upon the settlement of said account if there is none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the Chief Justice; but if there is any of the estate remaining in the hands of the executor or administrator, and the heirs, devisees or legatees of the estate, or their assignees, or either or any of them are present or represented in Court, it shall be the duty of the Chief Justice to order a partition and distribution of the estate to be made among them, upon satisfactory proof being made that they are entitled to receive it.

SEC. 90. That upon the settlement of the account of any executor or administrator, as provided for in the preceding section, if the heirs, devisees or legatees of the estate, or their assignees, or either or any of them do not appear or are not represented in the Court, and there are any funds of such estate remaining in the hands of the executor or administrator, it shall be the duty

of the Chief Justice to order the same to be paid over to the Treasurer of the State; and if there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, it shall be the duty of the Chief Justice to order such property to be sold on a credit of twelve months, and such debts to be collected; and at the first term of the Court, after the expiration of twelve months after such sale, and every six months thereafter, while the estate remains under the control of such executor or administrator, it shall be his duty to render to the Court a full exhibit of the condition of such estate, verified by affidavit. And whenever there shall be any funds of the estate in the hands of the executor or administrator, it shall be the duty of the Chief Justice to order the same to be paid to the Treasurer of the State: *Provided, however,* That while such estate, or any portion thereof remains under the control of the executor or administrator, the heirs, devisees, or legatees, or their assignees, or either or any of them, may obtain from the Chief Justice, at a regular term of the Court, an order to have the same partitioned and distributed among them according to their respective interests in the same, upon causing the executor or administrator to be cited, and making satisfactory proof to the Court of their right to the same; and whenever such estate shall have been so partitioned and distributed and delivered over to the persons entitled thereto, or when the debts due such estate have been collected so far as there is a reasonable prospect of collecting them, and the proceeds paid over to the Treasurer of the State as herein required, such executor or administrator shall be finally discharged from his trust, by an order of the Chief Justice, entered at some regular term.

SEC. 91. That whenever an order shall be made by the Chief Justice for an executor or administrator to pay over any funds to the Treasurer of the State under the provisions of this act, it shall be the duty of the Clerk of the Court in which such order may be made, to transmit to said Treasurer, by mail, a certified copy of such order within one month after said order shall have been made. Whenever the clerk mails such copy, he shall take from the postmaster, with whom it is mailed, a certificate, stating that such certified copy was mailed in his office, directed to the Treasurer of the State, at the seat of government of this State, and the date when it was mailed, which certificate shall be recorded in the minutes of the Court; and any clerk who shall neglect to transmit a certified copy of such order within

the time prescribed, and to take such certificate and have it so recorded, shall be liable to a penalty of one hundred dollars, to be recovered by an action in the name of the State, before any Justice of the Peace of the county, on the information of any citizen of the county; one half of which penalty shall be paid to the informer, and the other half to the State.

SEC. 92. That whenever any executor or administrator shall pay over to the Treasurer of the State, any funds of the estate he represents under the provisions of this act, he may take from said Treasurer a receipt for such payment, with his official seal attached, and file the same, and have it recorded on the minutes of the Court by which such funds were ordered to be paid; and a copy of such record shall be evidence of such payment.

SEC. 93. That whenever any funds of an estate shall have been paid to the Treasurer of the State, under the provisions of this act, any heir, devisee, or legatee of such estate, or their assignees, or either or any of them, may recover the portion of such funds to which he or she would have been entitled if the same had not been so paid to the Treasurer. Such recovery may be had in a suit against said Treasurer before any Court of competent jurisdiction in the county where the letters testamentary or of administration were granted: but in any such suit the plaintiff shall be liable for all costs of Court; and in all cases where any funds belonging to the estate of a deceased person have heretofore been paid into the Treasury of the State; or when any title papers belonging to any such estate have been deposited with the Comptroller, such funds or title papers may be recovered in like manner by the person or persons who would have been entitled thereto, if the same had not been so paid over or deposited.

SEC. 94. That whenever any executor or administrator shall fail to pay to the Treasurer of the State any funds of the estate he represents that he has been ordered by the Chief Justice so to pay within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the State Treasurer, damages thereon at the rate of *five per cent.* per month for each month he may neglect to make such payment after the three months from such order. The Treasurer of the State shall have the right, in the name of the State, to apply to the Chief Justice of the Court in which such order was made, to enforce the payment of such funds and damages if any have accrued; and it shall be the duty of the Chief Jus-

tice to enforce the payment in like manner as other orders of payment are enforced by him; or the said Treasurer shall have the right to institute suit in the name of the State against such executor or administrator, and the sureties on his bond for the recovery of the funds so ordered to be paid, and damages, if any have accrued: which suit may be instituted in any Court of competent jurisdiction, in the county where the letters testamentary or of administration were granted.

SEC. 95. That in all cases where an order shall have been made by any Chief Justice under the provisions of this act, for an executor or administrator to pay over money to any person other than the Treasurer of the State, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable to pay out of his own estate to the person in whose favor such order of payment was made, damages upon the amount he shall so neglect to pay, at the rate of *ten per cent.* per month for each and every month he shall so neglect to make such payment after the same was so demanded; such damages to be recovered by suit, before any Court having competent jurisdiction.

SEC. 96. That all applications for the partition and distribution of an estate under the provisions of this act, shall be in writing, and shall be filed with the Clerk of the Court to which the application is made. Upon the filing of any such application, it shall be the duty of the clerk to issue a citation, returnable to some regular term of the Court, which citation shall state the name of the person whose estate is sought to be partitioned and distributed—the term of the Court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made; such citation shall be personally served by leaving a copy thereof with each person entitled to a share of the estate who is known, and is a resident of this State; and if there be any persons so entitled, who are not known or who are not residents of this State, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one; if not, then it shall be published in like manner in one of the nearest newspapers published in the State, a copy of such publication and the affidavit of the publisher or

printer attached thereto, stating that it was so published, shall be evidence of the publication.

SEC. 97. That at the return term of any such citation as is provided for in the preceding section, or at some succeeding term to which the application may be continued by the Court, if it shall appear that such citation has been served and published as required by law, the Court shall proceed to ascertain who are the persons, by law, entitled to partition and distribution, and their respective shares; and if there are any persons so entitled, who are known, and are minors, and have no guardian in this State, or whose guardians are also entitled to a portion of such estate, the court shall appoint a guardian, *ad litem*, to represent them in the partition of the estate; and if there are any persons so entitled, who are not known, or not residents of this State, and no person appears who is authorized to represent them, the Court shall appoint an attorney to represent them in the partition of the estate: after which, the Court shall proceed to ascertain whether advancements have been made to any of the persons so entitled—their nature and value, and require the same to be placed in *hotch pot*, as required by the law governing descents and distributions; and also to ascertain what estate is liable to partition and distribution: the court shall then enter a decree, which shall state the name and residence if known, of each person entitled to a share of the estate—specifying those who are known to be minors—the name of their guardian or guardians *ad litem*—the name of the attorney appointed to represent those who are unknown, or are not residents of this State: the decree shall also state the proportional part of the estate to which each is entitled, and shall contain a full description of all the estate to be distributed: if the estate to be distributed shall consist only of money, or debts due the estate, or both, the court shall fix the amount to which each is entitled, and order the payment and delivery thereof by the executor or administrator; but if the estate do not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet persons as commissioners to make a partition and distribution of the estate, and shall order a writ of partition to issue, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the Court, a copy of which shall accompany such writ; and, also, commanding them to make due return of said



writ—with their proceedings under it—at some term of the Court to be named in the writ.

SEC. 98. That it shall be the duty of the Commissioners of partition under this act, to make a fair, just and impartial partition and distribution of the estate in the following order:—1st.—Of the land or other real estate by allotment to each distributee, of a part in each parcel, or of parts in one or more parcels or of one or more parcels either with or without the addition of a part or parts of other parcels as shall be most for the interest of the distributees: *provided*, the said real estate is capable of being so divided without manifest injury to all or any of the distributees. And the said Commissioners shall have power if they think it necessary, to call to their aid one or more well qualified surveyors to run the lines of any lands and also divisional lines thereof. If the real estate is not capable of a fair, just and equal division, in kind, but may be made so, by allotting to one or more of the distributees a proportion of money or negroes, or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate, and supply the deficiency of any share or shares from the money, negroes or other property. The Commissioners shall proceed to make a like division in kind as near as may be, of the negroes,—supplying the deficiency of any share or shares from the money or other property; and also a like division of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

SEC. 99. That when, in the opinion of the Commissioners, the whole, or any portion of any estate, is not capable of a fair and equal division among the distributees, the said Commissioners shall make a special return of such property to the court, with the value thereof duly appraised by them. Upon such return being made to the court, any one or more of the distributees at a regular term of the court by the payment to the executor or administrator of the appraised value of the property so returned as incapable of division; or on the execution of his or their obligations with one or more good and sufficient sureties in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; *provided*, the court may think it for the interest of the distributees to allow a credit, shall have the right to take the said property.

Should any one or more of the distributees take the said property as aforesaid, it shall be the duty of the court to enter a decree stating the facts; and on the entry of such decree the property shall vest as fully and absolutely in the person or persons taking the same as the deceased was vested therewith: *provided*, nevertheless, that when obligations are executed as aforesaid, a lien shall exist upon such property by operation of law; to secure the payment of such obligations; *provided*, also, that if any of the distributees shall file in the court, his exception to the appraisal of the Commissioners, before any of the distributees shall have so taken such property, a new appraisal of said property shall be made by order of the court. If no distributee take the said property as aforesaid, the court shall order the sale of said property, either for cash, or on a credit as may be most for the interest of the distributees; and at such sale, if any distributee shall bid off any of said property, he shall be required to pay or secure, as the case may be, only such amount of his bid as may exceed the amount of his share of such property; and the proceeds of sale, when collected, shall be distributed by the court among those entitled thereto.

SEC. 100. That said Commissioners having divided the whole or any part of the estate, shall make to the court a report in writing, subscribed and sworn to by them, containing a statement of the property divided by them; and also a particular description of the property allotted to each distributee, and its value. And if it be real estate that has been divided, said report shall contain a general plat of such land, with the divisional lines plainly set down, and the number of acres in each share. Upon the return of such report, it shall be the duty of the court, at some regular term, to examine said report carefully; and if it be merely informal, to cause said informality to be corrected: and if such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and order it to be recorded; but if said division shall not appear to have been so made, or any valid exceptions are taken to it, the court shall set aside said report and division, and order a new partition to be made.

SEC. 101. That when any portion of the estate to be partitioned lies in a distant county, and cannot be fairly partitioned without a view thereof, and it is inconvenient for the Commissioners to go and examine such property, they may report such facts to the Chief Justice in writing; whereupon he may at some

regular term of the court, if satisfied that the said property cannot be conveniently divided, or that its sale would be more advantageous to the distributees, order a sale thereof for cash, or on a credit of not more than twelve months, at his discretion: and when the proceeds of such sale shall have been collected, they shall be distributed, by him, among those entitled thereto; but if no such proof be made, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated—and the same proceedings shall be had thereon, as is provided in this act for Commissioners to make partition.

SEC. 102. That when any husband or wife shall die leaving any common property, the survivor may at any time after letters testamentary or of administration have been granted and an inventory of the estate of the deceased has been returned, make application to the court from which such letters were granted, for a partition of such common property; and if he or she shall execute and deliver to said Chief Justice, an obligation with good and sufficient sureties, payable to, and approved by said Chief Justice, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one half of all debts existing against such common property; then the Chief Justice shall proceed to make a partition of said common property into two equal moities—one to be delivered to the survivor and the other to the executor or administrator of the deceased; and all the provisions of this act respecting the partition and distribution of estates, shall apply to any partition made under the provisions of this section so far as the same may be applicable; and whenever such partition may be made, a lien shall exist upon the portion of such survivor to secure the payment of the obligation he may have given as aforesaid; and until a partition shall be applied for as herein provided, the executor or administrator of the deceased shall have the right and it shall be his duty to recover possession of all of such common property, and hold the same in trust to be administered for the benefit of the creditors and others entitled thereto under the provisions of this act. After such partition any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for the one half of such debt as he may establish; and for the other half he shall be entitled to be paid by the executor or administrator of the deceased.

SEC. 103. That in all cases where commissioners to make

partition are appointed under this act, the report of any three of them shall be sufficient. All such Commissioners shall receive *two dollars* each, for every day they may be engaged, and all their reasonable expenses shall be paid them.

SEC. 104. That in any case where the Chief Justice shall appoint a guardian *ad litem* for minors, or any attorney to represent the persons absent from the State, or unknown under the provisions of this act,—if such guardian *ad litem*, or attorney shall neglect to attend to the duties of such appointment, the Chief Justice shall appoint others in their places by an order entered on the minutes of the court; and such guardian *ad litem*, and attorneys shall be allowed by the Chief Justice, a reasonable compensation for their services, which shall be paid out of the estate of the person they represent, and the Chief Justice may order execution to issue for the same.

SEC. 105. That all expenses incurred in the partition of estates shall be paid by the parties interested in the partition—each party paying in proportion to the share he may receive. The portion of the estate allotted to each distributee, shall be liable for his or her portion of the expenses; and if not paid, the Court shall have power to order execution therefor in the names of the persons entitled thereto.

SEC. 106. That any person or persons having a joint interest with the estate of a decedent in any property, real or personal, may make application to the County Court from which letters testamentary or of administration have been granted on said estate, to have a partition thereof—whereupon the Court shall proceed to make a partition of said property between the applicant or applicants and the estate of the deceased; and all the rules and regulations contained herein, in relation to the partition and distribution of estates, shall govern partitions under this section, so far as the same may be applicable.

SEC. 107. That when the report of any Commissioners to make partition shall have been approved and ordered to be recorded, the Court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand—including all the title deeds and papers belonging to the same. If any distributee be a minor, his share shall be delivered to his guardian. If any minor distributee, resident of the State of Texas, shall have no guardian, the executor or administrator shall retain his share until a guardian shall be appointed, and he shall be allowed by the Court reasonable com-

pensation for taking care of the same. If any executor or administrator shall neglect to deliver to the person entitled thereto, his agent or attorney, when demanded, any portion of an estate so ordered to be delivered, such executor or administrator shall be liable to pay, out of his own estate, to the person so entitled, damages, on the amount of his share, at the rate of *ten per cent.* per month, for each and every month he shall so neglect to deliver such share, after such demand—which damages may be recovered by suit, before any Court of competent jurisdiction.

SEC. 108. That if any person entitled to a portion of an estate shall not demand the same from the executor or administrator, within six months after the report of the commissioners of partition has been approved and ordered to be recorded, the Chief Justice shall order so much of such portion as may be in money to be paid to the Treasurer of the State; and such portion as may be in other property, the Chief Justice shall order the executor or administrator to sell on such terms as he may think best; and when the proceeds of such sale are collected, he shall order the same to be paid to the Treasurer of the State—in all such cases allowing to the executor or administrator, reasonable compensation for his services.

SEC. 109. That whenever any executor or administrator shall file in the Court receipts showing that he has disposed of any portion of the estate, under the provisions of this act, the Court shall order the same to be recorded; and whenever he shall have so filed receipts showing that all of the estate has been disposed of by him under the provisions of this act, he shall be finally discharged from his trust by the Chief Justice.

SEC. 110. That any person capable of making a will, may so provide by his will, that no other action shall be had in the County Court, in relation to the settlement of his estate, than the probate and registration of his will and the return of an inventory of the estate; but in all such cases, any person having a debt against said estate may, by complaint in writing, filed in the Court where such will was proved, cause all the persons entitled to any portion of such estate under the will, or as heirs at law, to be cited to appear before such Court at some regular term, and execute an obligation, with two or more good and sufficient sureties, for an amount equal to the full value of such estate to be ascertained by the inventory; such obligation to be payable to the Chief Justice, and conditioned that the persons who execute the obligation shall pay all debts that may be esta-

blished against such estate, in the manner herein provided; and on the return of such citations, served, unless such persons so entitled to any portion of the estate, or some of them, or some other persons for them, shall execute such obligation to the satisfaction of the Chief Justice, such estate shall be settled under the direction of the Court as other estates are required to be settled; but if such obligations shall be executed, it shall be filed and recorded in said Court, and no other action shall be had in said Court in relation to such estate. All costs of such proceedings shall be paid by the persons so entitled to such estate, according to their respective interests in it. Every creditor of such estate shall have the right to sue on such obligation, and shall be entitled to judgment thereon, for such debt as he may establish against the testator by a verdict of the jury in such suit; or such creditors may have their action against those in possession of the estate.

SEC. 111. That at any time after the return of the inventory of the estate of a deceased person, any one entitled to a portion of said estate, as heirs, devisee, or legatee, or his or her guardian, if he or she be a minor, may, by a complaint in writing, filed in the Court where such inventory has been returned, cause the executor or administrator of the estate to be cited to appear at some regular term of the Court and render an exhibit, under oath, of the condition of such estate; and on the return of such citation served, the person so entitled to such estate, or any of them or any other persons for them may execute and deliver to the Chief Justice, an obligation payable to him, with two or more good and sufficient sureties, to be approved by the Chief Justice, for an amount at least equal to the appraised value of the estate as ascertained by the inventory, conditioned, that the persons who execute such obligation shall pay all debts against the estate not paid, that have been allowed by the executor or administrator, and approved by the Chief Justice, or that have been established by suit against the executor or administrator, or that may be established against the estate by suit in the manner herein provided, and may pay to the executor or administrator any balance that may be decreed to be due to him, on his exhibit, in obedience to said citation; whereupon such obligation shall be filed and recorded in said Court; and the Court shall on the application of any of the persons so entitled to any portion of the estate, cause a partition and distribution of such estate to be

made among the persons entitled thereto, in accordance with the provisions of this act, respecting the partition and distribution of estates; and a lien shall exist on all of said estate in the hands of the distributees, to secure the ultimate payment of the aforesaid obligation. Any creditor of such estate, whose claim is yet unpaid, and has been allowed by the executor or administrator, previous to the filing of such obligation, and approved by the Chief Justice, or established by suit against the executor or administrator, previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim: or any other creditor of such estate, whose claim is not barred by the laws of limitation, shall have the right to sue on such obligation, and shall be entitled to judgment thereon, for such debt as he may establish against the estate by a verdict of the Jury in such suit: or any of said creditors may sue the distributees, but no one of them shall be liable beyond his just proportion, according to the estate he may have received in the distribution.

SEC. 112. That when a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; but all of such estate, whether devised or bequeathed, or not, except such as may be exempted by law from the payment of debts, shall still be liable and subject, in their hands, to the payment of the debts of such testator: and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law; but, with the exceptions aforesaid, shall still be liable and subject, in their hands, to the payment of the debts of the intestate. But upon the issuance of letters testamentary or of administration, on any such estate, the executor or administrator shall have a right to the possession of the estate, as it existed at the death of the testator or intestate, with the exception aforesaid; and it shall be his duty to recover possession of and hold such estate in trust, to be disposed of under the provisions of this act.

SEC. 113. That the bond of an executor or administrator of any kind, shall not become void on the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered. Such suit may be brought and prosecuted by any administrator of the estate not

administered, in his own name as administrator, whenever the estate he represents has been injured by the breach of the bond of the executor or any previous administrator of the estate; or any other person or persons, injured by a breach of any such bond, may bring suit thereon in their own name; and any number of such persons may join in such suit.

Sec. 114. That all suits, on the bond of any executor or administrator shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor or administrator, and not thereafter: *Provided, however, that infants, femes covert, and persons non compos mentis, shall have at least two years within which to institute such suits after the removal of their respective disabilities.*

Sec. 115. That when an administrator of the estate not administered, has been or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor, by the will of the testator, as are different from those conferred by this act on executors generally: and such administrators shall have power to make themselves parties to all suits prosecuted by the former executor or administrator of the estate, and may be made parties to all suits prosecuted against the former executor or administrator of the estate: They shall have power to settle with the former executor or administrator of the estate and to receive and receipt for all such portion of the estate as remains in their hands: they shall have power to bring suit on the bond or bonds of the former executor or administrator in their own name as administrator for all the estate that has not been accounted for by such former executor or administrator; and they shall proceed to administer such estate in like manner as if their administration was a continuation of the administration of the former executor or administrator, with the exceptions herein before named; but such administrators shall, within one month after their being qualified, return an inventory and list of claims, in like manner as is required in this act, for original administrators, and they shall also in like manner, return additional inventories and lists of claims; and whenever an executor shall accept and qualify, after letters of administration shall have been granted, such executor shall in like manner succeed to the previous administrator; and he shall proceed to administer the estate in like manner as if his administration



was a continuation of the former one; subject, however, to any legal directions of the testator, in relation to the management of the estate.

SEC. 116. That whenever, under the provisions of this act, an administrator *pro tem.* shall have been appointed, and an executor shall afterwards be qualified, or an administrator appointed, such executor or administrator shall succeed and be made a party to all suits and actions prosecuted by, or against such administrator *pro tem.*; and such executor or administrator shall have the right to settle with such administrator *pro tem.*, and receive and receipt for all the estate remaining in his hands; and shall have the right to sue, in like manner as is provided for in the previous section, on the bond of such administrator *pro tem.*, for all the estate not accounted for by him.

SEC. 117. That all proceedings in relation to the settlement, partition and distribution of estates, that now remain unsettled in the Probate Courts, of the several counties in this State, shall be had in the County Court, and shall from this time forward, proceed and be concluded, under the provisions of this act.

SEC. 118. That the provisions contained in this act respecting the presentation of claims, shall not be so construed as to apply to the claim of any heir, devisee or legatee, when claiming in that capacity; and any devisee or legatee may obtain from the Chief Justice of the Court where the will was proved an order for the executor to deliver to him the property devised or bequeathed, whenever it shall appear to such Chief Justice that there will remain in the hands of the executor after such delivery, a sufficient amount of the estate for the payment of all debts against said estate; *provided*, such devisee or legatee shall have first caused the executor, and the other devisees and legatees, if any, and the heirs if any of the estate is coming to them, to be cited to appear and show cause why such order should not be made.

SEC. 119. That when complaint shall be made in writing, to any Chief Justice, that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, said Chief Justice shall cause such person to be cited to appear before him, either in term time or in vacation, and show cause why he should not deliver such will to the Court for Probate; or why he should not deliver such papers to the executor or administrator: and upon the return of

such citation, served, unless such will or papers are so delivered, or good cause be shown to the Court for not delivering the same. The Chief Justice, if satisfied that such person had such will or papers, at the time of the complaint being filed, may cause him to be arrested and imprisoned until he so deliver them.

SEC. 120. That all the provisions in this act relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators respectively, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party is mentioned, the rule shall apply to a female, or to two or more having a joint interest, or jointly concerned, applying or called upon, so far as the rule can with propriety apply, or so far as is not otherwise directed.

SEC. 121. That any one interested in the estate of a deceased person, may at any time within two years after the settlement by the Chief Justice of any account of the executor or administrator of such estate, have the same revised and corrected by the District Court of the County in which the letters of such executor or administrator were granted, upon making proof before such District Court, that there was any error or fraud in such account or settlement: *Provided*, that he shall first obtain from the Clerk of the Court in which such account was settled, a transcript of all the papers relating to such account and settlement, and file the same with a petition in the office of the Clerk of said District Court, and cause such executor or administrator, or his legal representatives to be cited as in other suits in said District Court.

SEC. 122. That all decisions, orders, decrees and judgments, of the County Court, under the provisions of this act, shall be entered on the records of the Court by the Clerk, at the time such decision, order, decree or judgment shall be made or recorded.

SEC. 123. That any person who may consider himself aggrieved by any such decision, order, decree or judgment, shall have the right to appeal to the District Court of the County: *Provided*, he shall within fifteen days after such decision, order, decree or judgment, shall have been made and rendered, file with the Clerk of said Court, a bond for costs and damages, with good and sufficient sureties, payable to the Chief Justice in such sum as he shall require, and to be approved by said

Chief Justice; conditioned that the appellant shall prosecute said appeal to effect, and perform the decision, order, decree or judgment, which the District Court shall make thereon, in case the cause shall be decided against him.

SEC. 124. That upon such appeal bond being filed in the Clerk's office, it shall be his duty immediately to make out a certified transcript of the proceedings in the case, and transmit the same to the District Court.

SEC. 125. That in case the Clerk of the County Court shall be unable for want of time to make out such transcript before the first day of the next term of the District Court of the county, after such appeal is taken, then such transcript shall be transmitted to the next succeeding term of said Court.

SEC. 126. That in all cases where an executor or administrator shall neglect the performance of any duty required by this act, and shall be cited to appear before the Court on account thereof, he shall be liable for all costs of such proceeding out of his own estate; and whenever an executor or administrator shall be removed for any of the causes set forth in this act, he shall be liable in like manner for all costs attending such removal.

SEC. 127. That in all cases where a party shall file any application, complaint or opposition in the Court under the provisions of this act, and on the trial thereof he shall be defeated or fail in the object for which his application, complaint or opposition was filed, he shall be liable for all costs occasioned by the filing of his application, complaint or opposition.

SEC. 128. That the Chief Justice shall have power to enforce obedience to all his lawful orders against executors or administrators by attachment and imprisonment: *Provided*, no such imprisonment shall exceed three days for any one offence; he shall also have power to order the clerk to issue execution against the estate of an executor or administrator, in favor of any person to whom money has been ordered to be paid by such executor or administrator: such execution shall be made returnable in sixty days—shall be tested and signed by the clerk, and sealed with the seal of the Court; and may be directed to the sheriff or other lawful officer of any county in the State; and all proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court, so far as the same may be applicable.

SEC. 129. That in all proceedings in the County Court, arising under the provisions of this act, the depositions of witnesses may be taken and read in evidence under the same rules and regulations as in the District Court; and all laws in relation to witnesses and evidence, which govern the District Court, shall apply to all proceedings in the County Court under the provisions of this act, so far as they are applicable.

SEC. 130. That in all cases under the provisions of this act, where it is necessary to cite any person who is out of the limits of this State, and the manner of citing such person is not herein otherwise provided for, such person may be cited by publication in like manner as in the District Courts.

SEC. 131. That each Clerk of the county Court shall receive and file all applications, complaints, petitions, and all other papers permitted or required to be filed in said Courts under the provisions of this act, and shall endorse on each the date when it was filed, and sign his name to such endorsement: he shall issue all necessary notices, citations, writs, and process from said Court, without any order from the Chief Justice, unless such order is required by some provision of this act.

SEC. 132. That whenever complaint in writing, and under oath, shall be made to the Chief Justice by any person interested in the estate of a decedent, that the executor or administrator of such estate is about to remove the same or any part thereof, out of the limits of this State, such Chief Justice shall have power to order a writ to issue, directed to any lawful officer of this State, commanding him to seize such estate or any part thereof, and hold the same, subject to such further order as the Chief Justice may make on such complaint: *Provided*, That no such writ shall issue unless the complainant shall give bond, with good and sufficient security, payable to the executor or administrator, conditioned for the payment of all damages that may be recovered for the wrongful suing out such writ.

SEC. 133. That the provisions of this act respecting the presentation of claims shall not be construed to apply to any claim of an executor or administrator against his testator or intestate, that has not been allowed by some previous executor or administrator of the same estate; but any executor or administrator holding any such claims, shall file them in the Court from which his letters were granted on or before the sixth term of the Court after the original grant of letters, or the

same shall be barred. The Chief Justice shall, at said term, or at some subsequent term, proceed to examine such claims, and hear all legal evidence that may be offered in support of them, and if satisfied from the evidence that such claims, or any of them, are just, he shall enter on the minutes of the Court his approval of such of them as he may think just; and the amount so approved shall be paid in due course of administration; unless, within three months after such approval, some person interested in the estate shall take an appeal from such approval to the District Court; in which case, such account, or so much thereof as may be approved by a jury, shall be paid in due course of administration: If such claims or any of them shall not be approved by the Chief Justice, the executor or administrator may appeal to the District Court in like manner, and such amount as may be approved by a jury, shall be paid in due course of administration: If, in any appeal under the provisions of this section, the executor or administrator shall fail to establish the whole of his claim, he shall be liable for costs; but if he establish the whole amount of his claim, the costs shall be paid out of the estate of the testator or intestate.

SEC. 134. That the Chief Justices of the several County Courts shall have like power to enforce all orders, decrees and judgments heretofore made and rendered in the Probate Court of their county, as they would have if such orders, decrees and judgments had been made or rendered by them under the provisions of this act.

SEC. 135. That the rights, powers and duties of executors and administrators shall be governed by the principles of the Common Law, where the same does not conflict with the provisions of this act.

SEC. 136. That in all cases where a Chief Justice may have been executor or administrator of an estate, in the county where, and at the time he was elected; or, when a Chief Justice may wish to probate a will, and accept as the executor of the estate of a testator, in the county where he officiates; or when he may be entitled to a distributive share of an estate that is to be settled in his Court, any two of the County Commissioners shall have power to do all acts pertaining to the settlement, partition and distribution of such estates, that might be done by the Chief Justice.

SEC. 137. That this act shall take effect and be in force on and after the first Monday in August, 1848; and on and after

that day, "An Act to organize Probate Courts," passed 11th May, 1846, shall be, and is hereby, repealed.

Approved, March 20, 1848.

## CHAPTER 158.

An Act to provide for the organization of New Counties.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That whenever any new county shall hereafter be established, it shall be the duty of the County Court from which the territory of such new county, or the greater part thereof, was taken, at least one month previous to the general election for county officers, next after such new county shall have been established to lay off and divide such new county into convenient precincts, for the election of Justices of the Peace and Constables; defining particularly the boundaries of such precincts, and also, to designate convenient places in such new county, where elections shall be held: of all which they shall cause a record to be made by the Clerk and a copy thereof shall be transmitted to the Chief Justice of such new county, when elected.

SEC. 2. That it shall be the duty of the Chief Justice of every county of this State, from which any new county has been so taken, at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county, on said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officer shall hold such elections in accordance with the laws regulating elections, and shall make three returns to the Chief Justice who ordered such election, who shall open and examine such returns and give certificates to the persons elected.

SEC. 3. That in all cases where the office of Chief Justice

shall be vacant, any two of the County Commissioners shall be authorized to perform all the duties required of Chief Justices by the provisions of this act.

SEC. 4. That in all cases, where new counties have been established by this Legislature, and no other provision has been made, for the organization of such counties, they shall be organized under the provisions of this act, and this act shall take effect and be in force from and after its passage.

Approved, March 20, 1848.

## CHAPTER 159.

An Act to regulate proceedings in the County Courts, relating to guardians and wards.

SECTION 1. *Be it enacted by the Legislature of the State of Texas, That* in all cases not otherwise provided for by law, the father while living and after his death, and when there shall be no lawful father, then the mother, if living, shall be entitled to the guardianship of their minor children; and shall have the custody of their persons, education and estates: *Provided, That* if such estates are given to such minor children by any other person than such parent, the father or mother entitled to such guardianship shall give bond with security, take the oath and return an inventory as hereinafter prescribed for other guardians.

SEC. 2. That if a minor have no parents living, or the parents be adjudged according to law, incompetent or unfit for the duties of guardian, the Chief Justices in their respective counties shall appoint guardians to such minor under the age of fourteen years, and admit those over that age to choose guardians for themselves, subject to the approval of the said Chief Justice.

SEC. 3. That whenever it shall come to the knowledge of any Chief Justice in this State, that there is within his county, any minor without any legal or natural guardian, if such minor be under the age of fourteen years, such Chief Justice shall appoint a guardian for such minor; but if such minor shall be over the age of fourteen years, the Chief Justice shall cause a

citation to be issued and served on such minor, to appear before him at some regular term of the County Court and choose a guardian; and if such minor, after service of such citation shall neglect to appear, or to choose a guardian after appearing, the said Chief Justice shall appoint one. If such minor appears and makes choice of a guardian, and the Chief Justice is satisfied that the person chosen is suitable and competent, the person so chosen shall be appointed; but if the choice shall not be approved by the Chief Justice, he shall appoint some competent and suitable person to be guardian for such minor.

SEC. 4. That whenever the Chief Justice shall be satisfied that it will be for the advantage of a minor, to appoint a guardian of the estate of such minor, different from the guardian of the person he shall have power to make such separate appointment for a minor under the age of fourteen years, and to allow a minor over that age to make such separate choice, subject to the approval of such Chief Justice, as heretofore directed.

SEC. 5. That when a minor shall be entitled to, or possessed of any estate not derived from the parent who shall be the natural guardian at the time, and it shall be shown to the Chief Justice of the County, that such parent is incompetent to the care of such estate, or is mismanaging or wasting the same, such Chief Justice shall cause a citation to be issued and served on such parent to appear before him at some regular term of the County Court, and show cause why a guardian of the estate of such minor should not be appointed or chosen, and if, after service of such citation, no sufficient cause be shown, such Chief Justice shall appoint a guardian of the estate of such minor if under fourteen years of age, or if over that age, admit the minor to choose one in the same manner, and subject to the same restrictions as herein provided for minors over fourteen years of age.

SEC. 6. That a minor, having a guardian of his person or of his estate appointed by the Chief Justice upon attaining the age of fourteen years, may choose another guardian of his person or of his estate, before the Chief Justice in the County of such minor's residence; and if such Chief Justice is satisfied that the person chosen is suitable and competent, the appointment shall be made accordingly.

SEC. 7. That if any person who has been appointed a guardian by will, shall fail to appear before the Court where the will was probated, and accept of such appointment and obtain letters of guardianship, within six months after the probate of the



will, such appointment shall be considered as if it had never been made by the testator.

SEC. 8. That no appointment of a guardian shall be made by the Chief Justice, except at a regular term of the County Court, and after ten days' notice has been given by the Clerk of said Court, by posting a notice at the Court house and two other public places in the County, such notice shall state the person for whom a guardian is to be appointed, and the term of the Court when an appointment will be made: *Provided*, That this section shall not apply to the appointment of a guardian ad litem.

SEC. 9. That every appointment of a guardian shall specify whether it be of the person or of the estate or of both the person and estate of the minor; and every guardian shall continue in office, unless sooner discharged according to law, until the minor, if a male, shall arrive at the age of twenty-one years, and if a female, until her marriage or arrival at the age of twenty-one years, whichever shall first happen. All letters of guardianship shall be signed by the Chief Justice, and attested by the Clerk of the County Court with the seal of said Court, and such letters, or a certificate of the Clerk of said Court, attested by the seal of said Court, stating that such letters have issued according to law, shall be evidence of the appointment of a guardian.

SEC. 10. That every person who may be appointed guardian of the estate of a minor, whether by last will or by the Chief Justice, shall before entering upon the duties of his appointment take and subscribe an oath, or affirmation, in substance as follows:—I, A. B., do solemnly swear that I will, well and truly, perform the duties of guardian of the estate, or of the person and estate, as the case may be, of the minor C. D.; which oath or affirmation may be taken and subscribed, either before the Chief Justice or the Clerk of the County Court, in term time or in vacation, and shall be filed and recorded on the minutes of the Court.

SEC. 11. That every person who may be appointed guardian of the estate of a minor, whether by last will, or by the Chief Justice, shall before entering upon the duties of his guardianship, enter into bond with two or more good and sufficient sureties, payable to, and approved by, the Chief Justice of the County, in a sum equal to at least double the estimated value of the estate of such minor, conditioned for the faithful discharge of the duties of such guardianship, according to law: *Provided*,

*however*; That when an appointment is made by will and directions are given in such will that the person so appointed shall not be required to give security, then the Chief Justice may grant letters of guardianship to the person so appointed, without bond and security. When an oath and bond is required from a parent who is entitled to the guardianship of his or her child, such bond and oath may be in substance the same, as the oath and bond prescribed in this act, for other guardians, varying the form to suit the circumstances of the particular case.

SEC. 12. That the following form may be used for the bonds of guardians:

The State of Texas, } Know all men by these presents,  
County of A. } that we, B. C., as principal, and D. E.  
and F. G., as sureties, are held and firmly bound unto the Chief  
Justice of the County of A., in the sum of            dollars, and  
cents, for the payment of which, well and truly to be made,  
we bind ourselves, our heirs, executors and administrators, jointly  
and severally, firmly by these presents, signed and sealed with  
our seals, the seals being scrawls, this the       day of       , A. D.  
18   . The condition of the above obligation is such that whereas  
the above bounden B. C. has been appointed by the last will of  
H., deceased, guardian of the estate or of the person and estate,  
or has been appointed by the Chief Justice of the County of A.,  
guardian of the estate, or of the person and estate, as the case  
may be, of the minor L. M. Now if the said B. C. shall well  
and truly perform all the duties required of him by law under  
said appointment, then this obligation shall be null and void;  
otherwise to remain in full force and effect.

B. C. [SEAL]  
D. E. [SEAL]  
F. G. [SEAL]

SEC. 13. That the bonds of guardians may be taken and approved either in term-time or in vacation, at any time within twenty days after the order is made for the appointment of a guardian or for the issuance of letters of guardianship and should any person appointed a guardian fail to take and subscribe the oath or affirmation, and to give bond in cases where a bond is required, within twenty days after the order of appointment or the order for the issuance of letters is made, such order shall be revoked by the Chief Justice without notice, and all bonds of guardians shall be filed and recorded in the minutes of the Court.

SEC. 14. That the Chief Justices of the several Counties of this State, shall have power to require new bonds of guardians in all cases where they have power to require new bonds of executors or administrators, and under the same rules and regulations, and with like effect.

SEC. 15. That every guardian of a minor shall immediately after the commencement of his guardianship, make out, with the assistance of appraisers, to be appointed by the Chief Justice, an inventory and appraisement of all the estate of his ward that has come to his knowledge; which appraisement shall be sworn to by the appraisers, and such guardian shall also make out a list of all claims and debts owing to his ward, which inventory and list of claims shall be sworn to by such guardian, and returned to the Court having jurisdiction of his guardianship, within sixty days after the commencement of his duties; such inventory and list of claims may be returned either in term-time or vacation, but when returned, shall be noted on the minutes of the Court, and shall be filed and recorded by the Clerk.

SEC. 16. *Be it further enacted*, That whenever any guardian shall discover any estate of his ward that has not been inventoried and appraised, or any claims or debts owing to his ward that have not been included in the list returned, he shall forthwith make out and return an additional inventory and appraisement of such estate, and list of such claims or debts, and whenever it shall be shown to the Chief Justice that any guardian has not returned to the court an inventory and appraisement of all the estate of his ward, and a list of all the claims and debts owing to his ward, such Chief Justice shall cause such guardian to be cited, either in term time or in vacation, and require him to return an additional inventory and appraisement of such estate and list of such claims and debts, and all such additional inventories and appraisements and lists of claims and debts, shall be made out, sworn to, returned, and recorded in the manner prescribed by law, for original inventories, appraisements, and lists of claims.

SEC. 17. *Be it further enacted*, That such inventories, appraisements and lists of claims may be given in evidence in any suit by or against such guardians, but they shall not be conclusive against the minor if it be shown that there is other property of the minor or other claims or debts due the minor not included therein, or if it be shown that the estate or claims or debts were actually worth more than the value at

which they are set down in such inventories appraisements and lists.

SEC. 18. *Be it further enacted,* That the Chief Justice shall appoint appraisers of the estates of minors in the same manner as appraisers of the estates of deceased persons, and all the rules and regulations respecting appraisers of the estates of deceased persons, shall apply to appraisers of the estates of minors.

SEC. 19. *Be it further enacted,* That every guardian of the estate of a minor shall use ordinary diligence to collect all claims or debts owing to his ward, and to recover possession of all property to which such ward has a title or claim, provided there is a reasonable prospect of collecting such claims or debts, or of recovering such property, and if any guardian shall neglect to use such diligence, he and the sureties on his bond shall be liable for all damages occasioned by such neglect.

SEC. 20. *Be it further enacted,* That it shall be the duty of every guardian of the estate of a minor, to take care of and manage such estate in such manner as a prudent man would manage his own estate; and all necessary and reasonable expenses incurred by such guardian in the safe keeping, preservation and management of his ward's estate, and all necessary and reasonable expenses incurred by him in collecting claims or debts due to his ward, or in recovering property to which his ward has a title or claim, shall be allowed to such guardian by the Chief Justice, on proper proof, to be paid out of the estate of his ward; and every such guardian shall account to his ward for all such rents and profits and revenues as the estates would have produced by such prudent management.

SEC. 21. *Be it further enacted,* That every guardian of the person of a minor shall be entitled to the charge, custody and control of the person of his ward, and the care of his education, support and maintenance: every guardian of the estate of a minor, shall be entitled to the possession and management of his estate, shall have authority to receive all debts, rents and things in action, due or belonging to his ward, to sue and defend for his ward in all suits or actions necessary to be prosecuted for or against him; and in the management of such estate, such guardian shall be governed by the provisions of this act. Every guardian of the person and estate of a minor shall have all the rights and powers, and shall perform all the duties both

of a guardian of the person and a guardian of the estate of a minor.

SEC. 22. *Be it further enacted*, That whenever a guardian of the estate of a minor shall die, resign his trust or be removed in any manner, the person who may be appointed guardian of the estate of such minor, shall succeed to all the rights, powers and duties of the previous guardian; he may be made a party to all suits or actions by, or against any previous guardian; he shall have the right to recover from any previous guardian, all the estate of his ward, and to receipt for the same; and may sue in his own name on the bond of any previous guardian for all such estate of his ward as has not been accounted for by any previous guardian.

SEC. 23. *Be it further enacted*, That every guardian of the estate of a minor shall put the money of his ward to interest upon mortgage on real estate, to be approved by the Chief Justice, or he may with leave of such Chief Justice, and the assent of his sureties, retain the money in his hands, paying interest therefor: But if no person can be found to take the money upon interest and the guardian should not choose to retain the same paying interest, he shall be liable for the principal only, until the same can be put to interest. Every such guardian shall loan the money of his ward at the highest rate of interest that can be obtained, not exceeding twelve per cent. per annum, and shall account for all interest which shall be charged in their annual settlement.

SEC. 24. *Be it further enacted*, That the Chief Justice shall order all minors under his jurisdiction to be properly supported and educated, according to the means of such minor, and for that purpose shall from time to time make the necessary appropriations out of the estate of such minors, and when necessary to raise means for the support and education of such minors, or to pay debts against their estate, may order the sale of any personal property of such minor, other than slaves, and the Chief Justice may also order the sale of any perishable property, of a minor, that is liable to waste or to be injured by keeping, if he shall be satisfied that such sale will be for the interest of such minor.

SEC. 25. *Be it further enacted*, That whenever any guardian of the estate of a minor shall represent to the Chief Justice that such minor has not sufficient means for his proper support and education, or to pay the debts against his estate without a sale

of some portion or all of the real estate or slaves of such minor, such Chief Justice, if satisfied of the truth of such representation, shall order a citation to be published in some newspaper printed in the county, if there be one, if not, then in some newspaper printed in the nearest adjoining county where there is one, for four successive weeks, which citation shall state the application for such sale, the property sought to be sold, and the term of the court when the application will be acted on, and shall require all persons interested in the welfare of such minor to appear and show cause why such sale should not be made as applied for at the term of the court named in such citation, or at some subsequent term of the court to which the application may have been continued, the Chief Justice, if satisfied that the citation has been published according to law, shall proceed to hear the application, and any opposition that may be made thereto, and if satisfied that a necessity exists for a sale of any such property, he shall order it accordingly.

SEC. 26. *Be it further enacted*, That all sales of a minor's property that may be ordered by the Chief Justice, under the provisions of this act, shall be made by the guardian of the estate of such minor in the same manner, and with the same effect as sales are required to be made by executors and administrators, all the rules, regulations and provisions respecting sales by executors or administrators shall apply to and govern sales by guardians, so far as the same are applicable and not inconsistent with the provisions of this act.

SEC. 27. *Be it further enacted*, That every guardian of the estate of a minor shall annually make an exhibit of the condition of the estate of his ward, to the County Court of the county that has jurisdiction of the matter; and shall also annually make a settlement of his account as guardian with such Court, beginning at the first term of said Court after the end of the year from the commencement of his duties, and at each corresponding annual term, until his final settlement, and the like notice shall be given of such settlement as is required to be given for the settlement of accounts of executors and administrators; and in such settlements, guardians of the persons of the minor shall render a statement under oath, supported by proper vouchers, of the application of all money directed by the Chief Justice to be applied by them to the support and education of their wards; and any guardian neglecting or refusing to make such settlement and statement on oath,

as is herein required, shall be liable to be attached and imprisoned until he shall make such statement and settlement, provided he shall first have been cited to appear and make such settlement and statement.

SEC. 28. *Be it further enacted*, That whenever the guardian of the estate of a minor shall consider that it will be for the interest of his ward, that he should execute any bond that may be required by law, in order to obtain a partition of any estate in which such minor may be entitled to a distributive share, he may present a petition to the Chief Justice at some regular term of the court, setting forth such facts, and if the Chief Justice shall be satisfied that the execution of such bond will benefit such minor, he may order him to execute such bond, and any bond executed by a guardian in pursuance of such order, shall bind the estate of such ward in like manner as if executed by himself after he was of full age.

SEC. 29. *Be it further enacted*, That the Chief Justice may authorize any guardian of the estate of a minor under his jurisdiction to purchase property, for the use of his ward, in payment of any debt due to such ward in all cases where he shall be of opinion that the interest of the ward will be advanced thereby.

SEC. 30. *Be it further enacted*, That the Chief Justice of every county in this State shall have power to cite any guardian under his jurisdiction, and require him to render an account of his guardianship, as often as he may think such exhibit necessary; and such Chief Justice shall have power at a regular term of the court to remove any guardian whenever he shall be guilty of any gross neglect of duty, or whenever he shall mismanage, misapply or waste the estate of his ward, or whenever he shall remove out of this State, or whenever he shall fail to comply with any lawful order of the Chief Justice in relation to the estate of his ward; but in all such cases the guardian shall be first cited, and they may either in term-time, or in vacation, suspend any guardian from the exercise of any of his duties for any of the causes named in this section.

SEC. 31. *Be it further enacted*, That the several Chief Justices of this State shall have power to order any property or estate that may come to the possession of a guardian as such, and shall be in his possession at the determination of his guardianship to be delivered to the person who was his ward, his executor or administrator, and to enforce the same by attachment

and imprisonment not exceeding three days; and they shall also have power, on the application of any ward, when he shall become entitled to have the possession of his estate, to cite the guardian to such ward to appear and make a final settlement of his guardianship, and to enforce such final settlement and the payment of any balance that may be found to be due from a guardian on such final settlement, either by attachment and imprisonment not exceeding three days, or by execution in like manner as executions are authorized to be issued by them against executors and administrators.

SEC. 32. *Be it further enacted,* That each guardian of the estate of a minor, shall be allowed to retain in his hands a commission of five per cent. upon all sums that he actually receives or pays away in cash, for his services as guardian; and in case any such guardian shall control a plantation for his ward, the Chief Justice shall have power to allow him a reasonable compensation for such service.

SEC. 33. *Be it further enacted,* That in all cases where any guardian and his ward may both be residents of any other State or Territory of the United States, and such ward may be entitled to property of any description in this State, such guardian, on producing to the Chief Justice of the county where such property or the principal part thereof is situated, at some regular term of the County Court, a full and complete transcript from the records of a court of competent jurisdiction in the State or Territory, where he and his ward reside, certified as required by the law of the United States, showing that he has been appointed guardian, and has given bond and security in the State or Territory where he and his ward reside, in double the value of the property of such ward; and also showing to such Chief Justice that a removal of the property of such ward will not conflict with the terms or limitations attending the right by which the ward owns the same, then such transcript may be recorded in such court, and such guardian, shall be entitled to receive letters of guardianship of the estate of such minor from such Chief Justice, which shall authorize him to demand, sue for, and recover any such property, and remove the same to the place of residence of himself and his ward; and the Chief Justice may order any resident guardian, executor, or administrator, having any of the estate of such ward, to deliver the same to such non-resident guardian; *Provided,* All debts known to exist against



such estate have been first paid ; *And, provided, also,* That the benefit of this section shall not extend to any citizen of any State or Territory in which a similar law does not now exist, or may not hereafter be passed.

SEC. 34. *Be it further enacted,* That when any guardian of the estate of a minor shall desire to remove the same from one county to another, in this State, the Chief Justice may permit him to do so by an order entered on the minutes of the Court ; *Provided,* he shall have first obtained letters of guardianship from the Chief Justice of the county to which he proposes to remove such estate, together with a certificate from such Chief Justice, attested by the Clerk of the Court of such Chief Justice, and the seal of the county, stating that he has been so appointed, and has given bond and security in double the value of such estate, and has also filed in such Court a certified transcript of all the proceedings in relation to his guardianship.

SEC. 35. *Be it further enacted,* That if information in writing be given to any Chief Justice in this State, that any person in his county is an idiot, or lunatic, or is *non compos mentis*, and is incapable of managing his own affairs, and praying that an inquiry thereinto be had, and such Chief Justice shall believe such information to be true, he shall, at some regular term of the County Court, cause such person to be brought before him, and shall cause twelve competent jurors of the county to be summoned, who shall be sworn to enquire and a true verdict render, whether such person is of sound mind or not, whereupon the matter shall be tried ; and if the jury shall return a verdict that such person is not of sound mind the same shall be recorded, and the Chief Justice shall thereupon appoint a guardian of the person and estate of such idiot, lunatic or person *non compos* as the case may be, in like manner as provided for minors under fourteen years of age.

SEC. 36. *Be it further enacted,* That guardians of idiots, lunatics, and persons *non compos mentis*, shall continue in office, unless sooner discharged according to law, until their ward shall be restored to sound mind, or shall die ; and all the provisions of this act respecting guardians, for minors under fourteen years of age, shall apply also to guardians of idiots, lunatics and persons *non compos mentis*.

SEC. 37. *Be it further enacted,* That all papers and records in the several Probate Courts of this State, relating to guardians and the estates of minors, shall be transferred to the County

Court of said counties; and all the proceedings in said Probate Courts, in relation to guardians and the estates of minors, shall, from this time, be carried on and completed by said County Court, under the provisions of this act.

SEC. 38. *Be it further enacted*, That any guardian may resign his trust in like manner, and with like effect as in the case of an executor or administrator.

SEC. 39. *Be it further enacted*, That appeals may be taken from any decision, order, judgment or decree of the County Court, in relation to the estates of minors, idiots, lunatics, and persons *non compos mentis*, or in relation to their guardians in the same manner, and under the same rules as provided for appeals from said Court in matters relating to the estates of decedents, and any settlement of the account of any guardian may be revised and corrected in the District Court of the county at any time within two years, after such guardian has ceased his duties, upon proof that there was any fraud or mistake in such settlement: *Provided*, That such guardian, or his legal representatives shall be first cited as in other suits.

SEC. 40. *Be it further enacted*, That all suits and actions upon the bonds of guardians shall be commenced and sued within four years next after the death, removal, resignation or discharge of such guardian, and not thereafter; *Provided*, That infants, married women, and persons of unsound mind shall have at least two years within which to bring such suits after the removal of their respective disabilities.

SEC. 41. *Be it further enacted*, That lawful father of any minor under the age of twenty-one years, may, by last will appoint a guardian of the person or of the estate, or of both the person and estate of such minor; but no guardian so appointed shall interfere with the estate of such minor, until he shall have qualified and obtained letters of guardianship as herein required.

SEC. 42. *Be it further enacted*, That in all proceedings in the County Court arising under the provisions of this act, the depositions of witnesses may be taken and read in evidence under the same rules and regulations as in the District Courts, and all laws in relation to witnesses and evidence which govern the District Court, shall apply to all proceedings in the County Courts, under the provisions of this act, so far as the same are applicable.

SEC. 43. *Be it further enacted*, That in all cases under the

provisions of this act, when it is necessary to cite any person who is out of the limits of this State, such person may be cited by publication in like manner as in the District Court.

SEC. 44. *Be it further enacted*, That when a minor shall have no parents living, and no estate, the Chief Justice shall have power, without the appointment of a guardian, to bind out such minor to some suitable person who will undertake the support and education of such minor; if a male, until he shall arrive at the age of twenty-one years; and if a female, until she shall marry, or arrive at the age of twenty-one years, whichever shall first happen; and when any such minor shall have property, but not sufficient for his support and education, the Chief Justice may authorize the guardian of such minor to bind out such minor, under the like rules and regulations.

SEC. 45. *Be it further enacted*, That this act shall take effect and be in force from and after the first Monday in August, 1848.

Approved, March 20, 1848.

## CHAPTER 160.

### An Act Regulating Fees of Office.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be lawful for the District Attorneys, the Attorney General, the Clerk of the Supreme Court, the Clerks of the District Courts, the Clerks of the County Courts, the Chief Justices of the County Courts, the Sheriffs, the Coroners, the Justices of the Peace, the Constables, the Notaries Public, the County Surveyors, and the Deputy Surveyors, respectively, to demand and receive the several fees hereinafter mentioned, for services rendered by them respectively in their several offices, and no more:

#### TO DISTRICT ATTORNEYS.

SEC. 2. For every conviction in cases of felony, twenty dollars.

For every conviction under the laws against gaming, fifteen dollars.

For every conviction for any other offence against the laws of this State, ten dollars; which fees shall be taxed in the bill of costs against the defendant; but in no case shall be paid by the State.

For all money collected by District Attorneys in suits prosecuted by them in favor of the State, they shall be allowed, on all sums not exceeding five thousand dollars, five per cent: on all sums after the first five thousand dollars, two and one-half per cent.

TO THE ATTORNEY GENERAL.

SEC. 3. In each case that may be taken to the Supreme Court, the like fees and commissions as are allowed to District Attorneys; to be taxed and collected in the same manner.

TO THE CLERK OF THE SUPREME COURT.

SEC. 4. For entering the appearance of either party, in person or by attorney, to be charged but once, fifty cents.

For docketing each cause, to be charged but once, fifty cents.

For filing the record in each cause, fifty cents.

For entering each rule or motion, twenty-five cents.

For entering the order of the Court upon any rule or motion; or for entering any interlocutory judgment, fifty cents.

For administering an oath or affirmation, without a certificate, fifteen cents.

For administering an oath or affirmation, and giving a certificate thereof with seal, twenty-five cents.

For entering each continuance, twenty cents.

For entering every final judgment or decree, one dollar.

For each writ issued, one dollar.

For making out and transmitting the mandate and judgment of the Supreme Court to any inferior Court, one dollar and fifty cents.

For making copies of any papers or records in his office, including certificate and seal, when applied for by any person, for each hundred words, fifteen cents.

For recording the opinions of the Judges, for each hundred words, fifteen cents.

For taxing the bill of costs in each case; with copy thereof, fifty cents.

For every service not herein provided for, such fees as may be allowed by the Supreme Court, not to exceed the fees herein allowed for services requiring a like amount of labor. There shall be allowed to said Clerk, reasonable office rent, stationery, and furniture for his office, to be paid on the approval and order of the Supreme Court, out of the appropriation for the contingent expenses of said Court.

#### TO THE CLERKS OF THE DISTRICT COURT.

SEC. 5. For each writ or citation in a civil-suit, fifty cents.

For copy of petition including certificate and seal, for each hundred words, fifteen cents.

For docketing each cause to be charged but once, fifteen cents.

For filing each paper in a cause, ten cents.

For entering each appearance in person or by attorney, to be charged but once, ten cents.

For entering each continuance, fifteen cents.

For entering each motion or rule not otherwise provided for, with the order, decree, or judgment of the Court thereon, fifty cents.

For swearing each witness in a cause, ten cents.

For administering each oath or affirmation, without a certificate, ten cents.

For administering each oath or affirmation, and making a certificate thereof with seal when required, twenty five cents.

For each subpoena for one witness, twenty five cents.

For each additional name inserted in such subpoena, ten cents.

For writing and taking a bond in every case where a bond is required to be taken or filed in said Court, one dollar.

For each recognizance entered of record, fifty cents.

For swearing and empanneling a Jury and receiving and recording the verdict, in each cause tried by a Jury, fifty cents. For assessing the damages in each cause not tried by a Jury, fifty cents.

For each commission to take the deposition of one or more witnesses, fifty cents.

For copy of interrogatories, or cross interrogatories, with certificate and seal, for each hundred words, fifteen cents.

For each *scire facias*, (except against a Juror who may be excused,) one dollar.

For entering each interlocutory judgment, not otherwise provided for, fifty cents.

For entering each final judgment in a cause, fifty cents.

For entering each indictment, twenty five cents.

For arraigning each prisoner and entering his pleas, fifty cents.

For each commitment of a prisoner, seventy-five cents.

For taxing the bill of costs in each cause, with a copy thereof, twenty-five cents.

For each execution, fifty cents.

For each writ of possession or restitution, seventy-five cents.

For each *capias* or other original writ in a criminal cause, fifty cents.

For making out and transmitting the mandate and judgment of the District Court, upon an appeal from the County Court, one dollar.

For entering the return of each writ of execution, possession, or restitution, and recording the return of the officer thereon, fifty cents.

For a transcript of the record and papers in any cause when an appeal or writ of error is taken, with certificate and seal, for each hundred words, fifteen cents.

For copies of all records or papers in their offices, with certificate and seal, for each hundred words, fifteen cents.

For each certificate to any fact or facts contained in the records of his office, with certificate and seal, fifty cents.

For every service not otherwise provided for, such fee as may be allowed by the District Court, not to exceed the fees herein allowed for services requiring a like amount of labor.

There shall be allowed to said Clerks, such books, stationery and office furniture as may be necessary for his office, to be paid on the order of the County Court out of the County Treasury; and a suitable office shall also be provided by the County Court at the expense of the County.

## TO THE CLERKS OF THE COUNTY COURTS.

**SEC. 6.** For filing each paper required to be filed in their Courts, in relation to the estates of decedents or wards, ten cents.

For making out and posting the necessary notices, upon each application for the probate of a will or for the appointment of an administrator or guardian, or in any other case where notices are required to be given in any matter relating to the estates of decedents and wards, fifty cents.

For docketing each application, complaint, petition, or proceeding in relation to the estates of decedents or wards, to be charged but once, ten cents.

For each writ or citation, fifty cents.

For each copy of an application, complaint, or petition, that is required to accompany a writ or citation with certificate and seal, fifteen cents, for each hundred words.

For making out and attesting letters testamentary or of administration, or of guardianship, fifty cents.

For taking and recording the bond and oath of an executor, administrator or guardian, one dollar.

For entering each order, judgment or decree in relation to the estates of decedents or wards, fifty cents.

For recording all papers required to be recorded by them in relation to the estates of decedents or wards, for each hundred words, fifteen cents.

For swearing each witness in Court, ten cents.

For administering each oath or affirmation, without a certificate, ten cents.

For administering each oath or affirmation, and giving a certificate thereof, with seal when necessary, twenty-five cents.

For each subpoena for one witness, twenty-five cents.

For each additional name inserted in such subpoena, ten cents.

For each commission to take the deposition of one or more witnesses, fifty cents.

For copy of interrogatories or cross-interrogatories with certificate and seal, for each hundred words, fifteen cents.

For making out a transcript of the papers and records in any cause taken from the County Court to the District Court, with

certificate and seal, and transmitting the same, for each hundred words, fifteen cents.

For each execution, fifty cents.

For entering the return of each execution, and recording the return of the officer thereon, fifty cents.

For making copies of any papers or records in their offices, with certificate and seal, for each hundred words, fifteen cents.

For taking the acknowledgement or proof of any deed, bond, power of attorney, or any other instrument of writing for registration with certificate and seal, fifty cents.

For filing and recording each deed, bond, power of attorney, or any other instrument permitted or required to be recorded by them as recorders, for each hundred words, fifteen cents, including the certificate to such recording with seal.

The recording of all bonds of county officers, shall be paid for by the officer executing the same.

For each marriage license, and receiving and recording the return made thereon, one dollar.

For each license to a ferryman, one dollar.

For every license not otherwise provided for, fifty cents.

For each certificate to any fact or facts contained in the records of his office, with seal, fifty cents.

For every service for individuals, not otherwise provided for, such fee as may be allowed by the County Court; not to exceed the fees herein allowed for services requiring a like amount of labor.

For all county business, in relation to roads, ferries, bridges, elections, and all other county matters not herein provided for, such allowance as may be made by the County Court, to be paid out of the County Treasury.

The County Court shall, also, furnish said Clerks suitable offices, and such stationery, record books, and office furniture as may be necessary, at the expense of the County.

#### TO THE CHIEF JUSTICES OF THE COUNTY COURTS.

Sec. 7. For taking the probate of a will, two dollars.

For appointing an executor, administrator, or guardian, and approving bond, one dollar.

For each appointment of appraisers, fifty cents.

For each order of sale, fifty cents.

For each approval and confirmation of a sale, one dollar.



For each decree for a partition or distribution, two dollars.

For examining and approving or setting aside the report of commissioners of partition and distribution, two dollars.

For removing an executor, administrator or guardian, one dollar.

For administering any oath or affirmation required to be administered in relation to the estates of decedents or wards, with certificates and seal, when required, twenty-five cents.

For each certificate not otherwise provided for, with seal, fifty cents.

For each order required in relation to the estates of decedents or wards, not otherwise provided for, fifty cents.

They shall also be allowed a commission of one half of one per cent. upon the actual cash receipts of each executor, administrator or guardian, upon the approval of his annual exhibits and the final settlement of his accounts; but no more than one such commission shall be charged on any amount received by any executor, administrator or guardian.

For each certificate of election, with seal, fifty cents.

For ordering all elections and doing all other business required of him by law, in relation to elections, such sum as may be allowed him by the County Court.

#### TO SHERIFFS.

SEC. 8. For serving each original writ or citation in a civil suit and copy of petition, one dollar.

For serving each *capias* or other writ not otherwise provided for, in a criminal cause, one dollar.

For summoning each witness, fifty cents.

For serving each notice for the taking of depositions, and copy of interrogatories, seventy-five cents.

For serving each *scire facias*, (except against a defaulting Juror who may be excused,) one dollar.

For levying and returning each writ of attachment or sequestration, two dollars.

For serving each citation and garnishee, one dollar.

For each cause tried in the District Court, a Jury fee shall be taxed for the Sheriff, of fifty cents.

For taking each bond or recognizance, and returning the same to the proper Court, when necessary, seventy-five cents.

For serving any writ not otherwise provided for, seventy-five cents.

For each commitment or release, one dollar.

For levying each execution, one dollar.

For returning each execution, fifty cents.

For executing and returning each writ of possession or restitution, three dollars.

For all services attending the appraisements of property for sale, under execution, or any order of sale, one dollar.

For posting the advertisements for sales, under execution, or any order of sale, one dollar.

For endorsing the forfeiture of any bond required to be endorsed by him, fifty cents.

For executing a deed to each purchaser of real estate or slaves, under an execution, or an order of sale, two dollars.

For executing a bill of sale to each purchaser of personal property, other than slaves, under an execution or an order of sale, when demanded by the purchaser, one dollar.

For making money on execution or any order of sale, when the same is made by a sale, for the first hundred dollars, three per cent.; for the second hundred dollars, two per cent.; for all sums over two hundred dollars, one and a half per cent.—When the money is made without a sale, one half of the said rates shall be allowed.

For executing each death warrant, twenty-five dollars.

For whipping each person, by order of Court, two dollars.

For removing a prisoner, for each mile going and returning, including guards and all other expenses, twenty-five cents.

For attending a prisoner on *habeas corpus*, three dollars for each day.

For taking care of property levied on by a writ of execution, sequestration, or attachment, all reasonable expenses, to be taxed and allowed by the Court to which such writ is returnable.

For summoning Jurors in the District Court, serving all election notices, notices upon overseers of roads, attending the District and County Courts, and doing all other public business not otherwise provided for, such sum as may be allowed by the County Court, not to exceed fifty dollars per annum, to be paid out of the County Treasury.

## TO CORONERS.

Sec. 9. For summoning a jury, and all other business connected with an inquest upon a dead body, including certifying and returning the same to the proper Court, five dollars; to be paid out of the County Treasury: And a Justice of the Peace when performing such service shall receive a like fee, to be paid in like manner.

In all cases where a Coroner shall perform any of the duties of a Sheriff, he shall be entitled to the same fees as are allowed to Sheriffs.

## TO JUSTICES OF THE PEACE.

Sec. 10. For each citation or writ in civil suits, fifty cents.

For each warrant in criminal cases, fifty cents.

For taking each re-cognizance in a criminal case, fifty cents.

For taking each bond, not otherwise provided for, fifty cents.

For each subpoena for one witness, twenty-five cents.

For every additional name inserted in a subpoena, ten cents.

For docketing each cause, ten cents.

For each continuance, ten cents.

For swearing each witness in Court, ten cents.

For administering an oath or affirmation, without a certificate, ten cents.

For administering an oath or affirmation, with a certificate thereof, twenty-five cents.

For administering the oath, taking bond, and issuing a writ of attachment or sequestration, one dollar.

For causing a jury to be summoned, swearing them, and receiving and recording their verdict in each cause, tried by a jury before them, fifty cents.

For each interlocutory judgment or order in a cause, twenty-five cents.

For each final judgment, fifty cents.

For each application to set aside a judgment by default, or of nonsuit, or for new trial, with the final order or judgment of the Justice thereon, fifty cents.

For taking the acknowledgment for a stay in each cause, fifty cents.

For taking each appeal bond, twenty-five cents.

For each commission to take deposition of one or more witnesses, fifty cents.

For copy of interrogatories or cross-interrogatories, for each hundred words, fifteen cents.

For making out and certifying a transcript of the entries on his docket, and filing the same with the original papers of the cause in the District Court, in each case of appeal or certiorari, one dollar.

For each execution, fifty cents.

For each writ of possession or restitution, seventy-five cents.

For receiving and recording the return on each execution, writ of possession or restitution, thirty cents.

For each search warrant, thirty cents.

For each commitment, fifty cents.

For taxing costs and copy thereof in each cause, fifteen cents.

For every certificate not otherwise provided for, twenty-five cents.

For making copies of any papers or records in his office, including certificate, for any person applying for the same, for each hundred words, fifteen cents.

For taking down the testimony of witnesses, swearing them, taking the voluntary statements of persons accused, certifying and returning the same to the proper Court, in examinations for offences, for each hundred words, fifteen cents.

#### TO CONSTABLES.

Sec. 11. For serving each writ or citation in a civil suit, fifty cents.

For serving each warrant in a criminal case, fifty cents.

For serving each notice for the taking of depositions, and copy of interrogatories, fifty cents.

For executing a search warrant, fifty cents.

For levying and returning each writ of attachment or sequestration, one dollar.

For summoning each witness, twenty-five cents.

For committing a person to jail, seventy-five cents.

For taking each bond, fifty cents.

For levying each execution, fifty cents.

For executing each writ of possession or restitution, one dollar.

For returning each execution, writ of possession, or restitution, twenty-five cents.

For summoning a jury in a Justice's Court, one dollar.

For summoning a jury to hold an inquest before a Coroner, to be paid by the County, two dollars.

For advertising sale under execution, or any order of sale, fifty cents.

For each appraisement of property for sale under execution, or an order of sale, fifty cents.

For making title to purchaser of real-estate under execution or order of sale, one dollar.

For making title to purchaser of personal property under execution or order of sale, when demanded by the purchaser, fifty cents.

For making money under execution or order of sale, when a sale is made, four per centum on the amount.

When the money is made without a sale, two per cent. on the amount.

For conveying a prisoner to jail, including guard and all other expenses, twenty-five cents a mile, in going and returning.

For each day's attendance on the District Court, when summoned by the Sheriff, one dollar and fifty cents, to be paid out of the County Treasury.

For taking care of property levied on by a writ of execution, sequestration, or attachment, all reasonable expenses; to be taxed and allowed by the Court to which such writ is returnable.

For all services done by Sheriffs in business connected with Justices' Courts, they shall only receive the same fees as are allowed to Constables.

#### NOTARIES PUBLIC.

SEC. 12. For protesting a bill or note for non-acceptance or non-payment, registering and seal, two dollars.

For protest in all other cases, twenty cents for each hundred words, and fifty cents for the certificate and seal.

For taking the acknowledgment or proof of any deed or any other instrument of writing for registration, with certificate and seal, fifty cents.

For administering an oath or affirmation, with certificate and seal, fifty cents.

For taking the acknowledgment of a married woman, to a deed or any other instrument of writing, authorized to be executed by her, with certificate and seal, one dollar and fifty cents.

For all certificates, not otherwise provided for, with seal, fifty cents.

For all notarial acts not otherwise provided for, fifty cents.

For copies of all records and memorandums in their offices, for each hundred words, with certificate and seal, twenty cents.

#### TO COUNTY OR DISTRICT SURVEYORS.

SEC. 13. For inspection and recording of the field notes and plat of a survey, for any tract of land over one-third of a league, three dollars; for one-third of a league, two dollars; for any quantity of land less than one-third of a league, one dollar.

For each examination of papers and records in his office, at the request of any person wishing to examine them, twenty-five cents.

For receiving and filing each application for a location, fifty cents.

For copies of all field notes and plats, or any other papers or records in his office, for each hundred words, twenty cents, including certificate.

For surveying any tract of land, for each English lineal mile actually run, including all expenses of making the survey and returning the plat and field notes of survey, three dollars a mile.

SEC. 14. That the several officers and persons authorized to perform any of the services named in this section, shall be entitled to the fees herein allowed for such services, viz:

For taking the acknowledgment or proof of any deed, or any other instrument of writing for registration, with certificate and seal, fifty cents.

For taking the acknowledgment of a married woman to a deed or any other instrument of writing authorized to be executed by her, with certificate and seal, one dollar and fifty cents.

For taking the deposition of a witness, in answer to interrogatories or cross-interrogatories, under a commission, for each hundred words, twenty-five cents.

For swearing the witness to such answers, making certificates thereof with seal, and all other business connected with taking such depositions, fifty cents.

SEC. 15. That the fees herein before mentioned, pertaining

to suits or actions in Court, shall be taxed and allowed in the bill of costs against the party cast in each suit or action, wherein any such services shall be rendered; but not more than one copy of any matter shall be allowed in the bill of costs, and if any party or his attorney shall take out copies of his own pleadings, or of papers filed by him in any cause, no charge for such copies shall be allowed in the bill of costs.

SEC. 16. That no Clerk of the Court or Justice of the Peace, shall be allowed to charge any practising attorney of this State any fee for the examination of any papers or records in his office.

SEC. 17. That every Clerk of a Court, Sheriff, Justice of the Peace, and Constable in this State shall keep a fee book, and shall enter therein all fees charged for services rendered; which book shall, at all times, be subject to the inspection of any person wishing to see the account of fees therein charged against him.

SEC. 18. That none of the fees herein before mentioned, shall be payable by any person whatsoever, until there be produced, or ready to be produced unto the person owing or chargeable with the same, a bill or account in writing, containing the particulars of such fees, signed by the Clerk or officer to whom such fee shall be due, or by whom the same is chargeable.

SEC. 19. That in all cases where any person shall be presented or indicted by the Grand Jury, and shall be discharged from such presentment or indictment, neither the Clerks nor Sheriffs shall charge fees for the same: but if the party or parties so presented or indicted, shall be convicted, the Clerk or Sheriff shall charge him, her, or them, with all fees accruing thereon.

SEC. 20. That if any of the officers herein named, shall demand and receive any other or higher fees than are prescribed in this act, for any of the services herein mentioned, he shall be liable to the party aggrieved, for fourfold the fees so unlawfully demanded and received, to be recovered in any Court of competent jurisdiction, and shall also be liable to indictment by the Grand Jury, and on conviction may be fined in any sum not exceeding one hundred dollars for each and every case; and may also be removed from office at the discretion of the jury trying the same.

SEC. 21. That it shall be lawful for any Justice of the Peace or Clerk of the Supreme or District Court within this State, when any suits are determined in their respective Courts, and

the fees are not paid by the party from whom they are due, to make out executions for the same, directed to any lawful officer of the County where the party resides; and it shall be lawful for the Clerks of the County Courts to make out executions in like manner for the fees that may become due the officers of said Courts, directed to any lawful officer of the proper County, and the officers to whom any of such executions shall be directed, shall levy and proceed with the same as in other cases: *Provided*, That a bill of the costs shall in all cases accompany such executions.

SEC. 22. That in all cases where a citation or other process is required to be served by publication in a newspaper, the officer whose duty it may be to make such service shall be furnished with the printer's fee for such publication, before he shall be required to have such service made.

SEC. 23. That it shall be lawful for the Clerk of any Court or Justice of the Peace, to require security for costs before issuing any process in any suit about to be commenced; unless the party applying for such process, his agent or attorney shall make oath that the party so applying is unable to give such security.

SEC. 24. That this act shall take effect and be in force on and after the first Monday in August, 1848; and on and after that day, "an act establishing fees of office," approved 18th January, 1842, and all other laws respecting fees, for any service herein named, shall be, and the same are hereby repealed.

Approved, March 20, 1848.

## CHAPTER 161.

An Act to provide for the enumeration of the inhabitants of the State of Texas, for the year 1848.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That the Assessor of direct taxes of each county in this State, shall at the time he assesses the taxes in the year eighteen hundred and forty eight, take an enumeration of the inhabitants of the State as follows, to wit; in the first column,



the number of qualified electors; in the second column, all the white males over the age of eighteen years and under forty-five years; in the third column, all the white males under the age of eighteen years; in the fourth column all the white males over the age of forty five years; in the fifth column all the white females; in the sixth column, all the slaves; in the seventh column all free persons of color; and in the eighth column all the free white population.

SEC. 2. *Be it further enacted*, That the Assessors shall make out duplicate returns, one of which shall, on or before the second Monday of November, be filed by them in their respective County Clerk's office, and one transmitted by mail or otherwise to the Seat of Government, directed to the Secretary of State.

SEC. 3. *Be it further enacted*, That the several Assessors shall each receive three cents for each white inhabitant residing in the country, and two cents for each white inhabitant in a town or city, and one cent for each slave or free person of color, enumerated by them.

SEC. 4. *Be it further enacted*, That the said Assessors shall each take an oath, before some competent authority, to promptly and faithfully discharge the duties required of them in this act to the best of their ability.

SEC. 5. *Be it further enacted*, That the Assessors shall severally give bond with approved security, payable to the Chief Justice of their respective counties, and their successors in office, in the sum of five hundred dollars, conditioned for the faithful discharge of the duties required of them by this act.

Approved, March 20, 1848.

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## CHAPTER 162,

An Act to apportion Senators and Representatives of the Legislature among the several counties of this State according to the requirements of the Constitution.

SECTION. 1. *Be it enacted by the Legislature of the State of Texas*, That the State shall be divided into twenty-two Sen-

atorial Districts, which shall severally be entitled to one Senator, and be formed as follows, to wit :

- No. 1. Bowie, Cass, and Titus, 1177 electors.
- No. 2. Red River and Lamar, 1177 electors.
- No. 3. Fannin, Hopkins and Hunt, 1114 electors.
- No. 4. Grayson, Denton, Dallas, Collin, Henderson, Kaufman, and Van Zandt, 1256 electors.
- No. 5. Rusk and Panola, 1012 electors.
- No. 6. Smith, Harrison and Upshur, 1026 electors.
- No. 7. Nacogdoches and Shelby, 1193 electors.
- No. 8. San Augustine, Sabine, Newton, and Jasper, 1140 electors.
- No. 9. Liberty, Jefferson, Polk, Tyler, and Angelina, 1159 electors.
- No. 10. Cherokee, Anderson and Houston, 1244 electors.
- No. 11. Galveston and Brazoria, 1091 electors.
- No. 12. Harris, 1043 electors.
- No. 13. Grimes, Walker and Montgomery, 1211 electors.
- No. 14. Washington, Burleson, Milam, and Williamson, 947 electors.
- No. 15. Limestone, Navarro, Leon, Robertson, and Brazos, electors.
- No. 16. Travis, Hays, Bastrop, Fayette, and Caldwell, 1102 electors.
- No. 17. Austin, Fort Bend, Colorado, La Vaca and Wharton, 1124 electors.
- No. 18. Matagorda, Calhoun, Jackson, Victoria, De Witt and Gonzales, 1114 electors.
- No. 19. Nueces, San Patricio, Refugio and Goliad, electors.
- No. 20. Bexar, Guadalupe and Comal, 954 electors.
- No. 21. Starr, Webb and Cameron, electors.
- No. 22. All the counties east, or attached to Senatorial Districts east of Trinity River. The Chief Justices in all the counties in said district shall make return to the Chief Justice of Rusk county, whose duty it shall be to compare the votes so returned, and give his certificate of election to the person receiving the highest number of votes.

Sec. 2. That the Chief Justice of Cass county shall receive the returns, and give the certificate of election to the Senator elect of the first Senatorial District.

The Chief Justice of Red River county for the second District.

The Chief Justice of Fannin county for the third District.

The Chief Justice of Collin county for the fourth District.

The Chief Justice of Harrison county for the fifth District.

The Chief Justice of Rusk county for the sixth District.

The Chief Justice of Nacogdoches county for the seventh District.

The Chief Justice of San Augustine county for the eighth District.

The Chief Justice of Liberty county for the ninth District.

The Chief Justice of Cherokee county for the tenth District.

The Chief Justice of Galveston county for the eleventh District.

The Chief Justice of Harris county for the twelfth District.

The Chief Justice of Grimes county for the thirteenth District.

The Chief Justice of Washington county for the fourteenth District.

The Chief Justice of Limestone county for the fifteenth District.

The Chief Justice of Bastrop county for the sixteenth District.

The Chief Justice of Austin county for the seventeenth District.

The Chief Justice of Victoria county for the eighteenth District.

The Chief Justice of Nueces county for the nineteenth District.

The Chief Justice of Bexar county for the twentieth District.

The Chief Justice of Cameron county for the twenty first District.

The Chief Justice of Rusk county for the twenty second District.

Sec. 3. That the State shall be divided into Representative Districts, and that the Counties and Representative Districts shall elect members of the House of Representatives, as follows, to wit:

Red River 3080, and elect one Representative.

Red River 3030, and Bowie 1121, and elect one Representative.

Lamar 3639, and elect one Representative.  
 Fannin 2931, and elect one Representative.  
 Lamar and Fannin, one Representative.  
 Grayson 1156, Collin 877, and elect one Representative.  
 Dallas 1820, Denton 620, and elect one Representative.  
 Hopkins 1757, Hunt 977, and elect one Representative.  
 Titus 2157, and elect one Representative.  
 Cass 2005, and elect one Representative.  
 Harrison 3384, and elect one Representative.  
 Harrison 3384, and Upshur 1023, and elect one Representative.  
 Rusk 3181, and elect one Representative.  
 Rusk 3181, and Panola 1458, and elect one Representative.  
 Henderson 1892, and Smith 882, and elect one Representative.  
 Cherokee 2475, and elect one Representative.  
 Nacogdoches 2917, and elect one Representative.  
 Houston 1397, and Anderson 1498, and elect one Representative.  
 Nacogdoches, Houston, Anderson, Angelina 697, Cherokee 2475, and elect one Representative.  
 San Augustine 2176, and elect one Representative.  
 Shelby 2355, and elect one Representative.  
 Sabine 1251, Newton 755, and elect one Representative.  
 Jasper 797, Tyler 891, Jefferson 1000, and elect one Representative.  
 Liberty 1397, Polk 1068, and elect one Representative.  
 Galveston 3950, and elect two Representatives.  
 Harris 6557, and elect three Representatives.  
 Brazoria 1623, Fort Bend 852 and elect one Representative.  
 Montgomery 1037, Grimes 1339, and elect one Representative.  
 Walker 1881, and elect one Representative.  
 Leon 705, Robertson 588, Brazos 355, and elect one Representative.  
 Limestone 1343, Navarro 1272, and elect one Representative.  
 Matagorda 755, Calhoun 366, Jackson 440, Wharton 413, and elect one Representative.  
 Colorado 1074, Austin 1406, and elect one Representative.  
 Fayette 2204, and elect one Representative.  
 Washington 2205, and elect one Representative.

Burleson 866, Bastrop 1273, and elect one Representative.  
 Milam 943, Williamson , and elect one Representative.  
 Travis 2140, Hays , Caldwell , and elect one Representative.

Victoria 1044, De Witt 791, La Vaca 763, and elect one Representative.

Gonzales 1146, Guadalupe 697, Comal 917, and elect one Representative.

Bexar 4566, and elect two Representatives.

Nueces, Starr, Webb and Cameron , and elect one Representative.

Nueces, Starr, Webb, Cameron, San Patricio, Refugio and Goliad, and elect one Representative.

Starr, Webb and Cameron , and elect one Representative.

SEC. 3. That in the several Representative Districts, composed of more counties than one, the Chief Justices of the following named counties shall be the returning officers of the respective districts in which they reside, and shall give certificate of election to the person or persons elected; and in all elections contemplated by this act, should there be no Chief Justice in any county designated, or there be such Chief Justice, but he be unable to give such certificate, then said duty shall be performed by any two Commissioners of the County Court of the proper county, to wit:

The Chief Justice of Red River county for the District of Red River and Bowie counties.

The Chief Justice of Lamar county; for the District of Lamar and Fannin counties.

The Chief Justice of Grayson county, for the District of Grayson and Collin counties.

The Chief Justice of Dallas county, for the District of Dallas and Denton counties.

The Chief Justice of Harrison county for the District of Harrison and Upshur counties.

The Chief Justice of Rusk county for the District of Rusk and Panola counties.

The Chief Justice of Henderson county for the District of Henderson and Smith counties.

The Chief Justice of Cherokee county for the District of Anderson, Houston, Angelina, Nacogdoches, and Cherokee counties.

The Chief Justice of Sabine county for the District of Sabine and Newton counties.

The Chief Justice of Tyler county for the District of Jasper, Tyler and Jefferson counties.

The Chief Justice of Liberty county for the District of Liberty and Polk counties.

The Chief Justice of Brazoria county, for the District of Brazoria and Fort Bend counties.

The Chief Justice of Grimes county, for the District of Grimes and Montgomery counties.

The Chief Justice of Leon county for the District of Leon, Robertson, and Brazos counties.

The Chief Justice of Limestone county for the District of Limestone and Navarro counties.

The Chief Justice of Jackson county for the District of Jackson, Wharton, Matagorda and Calhoun counties.

The Chief Justice of Austin county, for the District of Austin and Colorado counties.

The Chief Justice of Bastrop county, for the District of Bastrop and Burleson counties.

The Chief Justice of Travis county for the District of Travis, Hays and Caldwell counties.

The Chief Justice of Victoria county for the District of Victoria, De Witt and La Vaca counties.

The Chief Justice of Gonzales county, for the District of Gonzales, Guadalupe, and Comal counties.

The Chief Justice of Nueces county, for the District of Nueces, San Patricio, Refugio and Goliad counties.

The Chief Justice of Nueces county for the District composed of Nueces, Starr, Webb and Cameron counties.

The Chief Justice of Cameron county for the District of Starr, Webb and Cameron counties.

SEC. 4. That all laws and parts of laws conflicting with the provisions hereof be, and they are hereby repealed: and that this act shall have effect from its passage.

Approved, March , 1848.



## STATE OF TEXAS.

I, the undersigned, Secretary of State of the State of Texas, certify that the second Legislature of said State commenced its session at the City of Austin, on Monday the thirteenth day of December, in the year one thousand eight hundred and forty-seven, and adjourned on the twentieth day of March, in the year one thousand eight hundred and forty-eight.

And I further certify, that the acts and joint resolutions contained in this Part and Volume, are true copies of the original rolls deposited in the Department of State, with which they have been carefully compared.



Given under my hand and official seal, at the city of Austin, the twenty-second day of April, one thousand eight hundred and forty-eight, and of the independence of Texas the thirteenth year.

W. D. MILLER.







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# APPENDIX.



# DECLARATION OF INDEPENDENCE

JULY 4th, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF  
AMERICA IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitled them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.—Such has been the patient sufferance of these colonies, and such

is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world:—

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the state, remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harrass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the *forms* of our governments.

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.



DECLARATION OF INDEPENDENCE.

7

The foregoing declaration was, by order of Congress, engrossed and signed by the following members;

JOHN HANCOCK.

NEW HAMPSHIRE.

JOSIAH BARTLETT,  
WILLIAM WHIPPLE,  
MATTHEW THORNTON,

MASSACHUSETTS BAY.

SAMUEL ADAMS,  
JOHN ADAMS,  
ROBERT TREAT PAINE,  
ELBRIDGE GERRY.

RHODE ISLAND.

STEPHEN HOPKINS,  
WILLIAM ELLERY.

CONNECTICUT.

ROGER SHERMAN,  
SAMUEL HUNTINGTON,  
WILLIAM WILLIAMS,  
OLIVER WOLCOTT.

NEW YORK.

WILLIAM FLOYD,  
PHILIP LIVINGSTON,  
FRANCIS LEWIS,  
LEWIS MORRIS.

NEW JERSEY.

RICHARD STOCKTON,  
JOHN WITHERSPOON,  
FRANCIS HOPKINSON,

JOHN HART,  
ABRAHAM CLARK.

PENNSYLVANIA.

ROBERT MORRIS,  
BENJAMIN RUSH,  
BENJAMIN FRANKLIN,  
JOHN MORTON,  
GEORGE CLYMER,  
JAMES SMITH,  
GEORGE TAYLOR,  
JAMES WILSON,  
GEORGE ROSS.

DELAWARE.

CAESAR RODNEY,  
GEORGE READ,  
THOMAS M'KEAN.

MARYLAND.

SAMUEL CHASE,  
WILLIAM PACA,  
THOMAS STONE,  
CHARLES CARROLL, of  
Carrollton.

VIRGINIA.

GEORGE WYTHE,  
RICHARD HENRY LEE,  
THOMAS JEFFERSON,  
BENJAMIN HARRISON,  
THOMAS NELSON, JR.  
FRANCIS LIGHTFOOT LEE,  
CARTER BRAXTON.

## DECLARATION OF INDEPENDENCE.

## NORTH CAROLINA.

WILLIAM HOOPER,  
JOSEPH HEWES,  
JOHN PENN.

THOMAS HEYWARD, JR.  
THOMAS LYNCH, JR.  
ARTHUR MIDDLETON,

## GEORGIA.

## SOUTH CAROLINA.

EDWARD RUTLEDGE,

BUTTON GWINNETT,  
LYMAN HALL,  
GEORGE WALTON.

## ARTICLES OF CONFEDERATION.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, THE UNDERSIGNED,  
DELEGATES OF THE STATES AFFIXED TO OUR NAMES, SEND GREETING.

WHEREAS, the delegates of the United States of America in Congress assembled did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz:—

*Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.*

ARTICLE 1. The style of this confederacy shall be, "The United States of America."

ARTICLE 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ARTICLE 3. The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE 4. The better to secure and perpetuate mutual

friendship, and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant: provided also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States or either of them.

If any person guilty of or charged with treason, felony or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE 5. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrest and imprisonments, during the time of their going to and from and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE 6. No State without the consent of the United States in Congress assembled; shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessel-of-war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit

of a delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels-of-war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels-of-war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE 7. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE 8. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

ARTICLE 9. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances; provided, that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and

in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: provided, that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or

cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings, being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction as they may respect such lands and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians not members of any of the states; provided that the legislative right of any state within its own limits be not infringed or violated—establishing and regulating postoffices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have author-



ity to appoint a committee to sit in the recess of Congress, to be denominated "a committee of the states," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses, to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them, in a soldierlike manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men or should raise a smaller number of its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped, in the same manner as the quota of such State, unless the legislature of such state shall judge that such extra number can not safely be spared out of the same; in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States or any of them, nor emit bills; nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the

number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army and navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by a delegate; and the delegate of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE 10. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

ARTICLE 11. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this Union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

ARTICLE 12. All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE 13. Every state shall abide by the decision of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by eve-

ry state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislature of every state.

And whereas it has pleased the great Governor of every state to incline the hearts of the legislatures we respectively represent in Congress, to approve of and to authorize us to ratify the said articles of confederation and perpetual Union: *know, ye*, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual Union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the Union be perpetual.

In witness whereof, we have hereunto set our hands, in Congress. Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

*New Hampshire.*

Josiah Bartlett,  
John Wentworth, Jr.

*Massachusetts Bay.*

John Hancock,  
Samuel Adams,  
Elbridge Gerry,  
Francis Dana,  
James Lovell,  
Samuel Holten.

*Rhode Island.*

William Ellery,  
Henry Marchant,  
John Collins.

*Connecticut.*

Roger Sherman,  
22

Samuel Huntington,  
Oliver Wolcott,  
Titus Hosmer,  
Andrew Adams,

*New York.*

James Duane,  
Francis Lewis,  
William Duer,  
Gouverneur Morris.

*New Jersey.*

John Witherspoon,  
Nath. Scudder.

*Pennsylvania.*

Robert Morris,  
Daniel Roberdeau,  
Jonathan Bayard Smith,

William Clingan,  
Joseph Reed.

*Delaware.*

Thomas M'Kean,  
John Dickinson,  
Nicholas Van Dyke,

*Maryland.*

John Hanson,  
Daniel Carroll.

*Virginia.*

Richard Henry Lee,  
John Banister,  
Thomas Adams,  
John Harvie,

Francis Lightfoot Lee,

*North Carolina.*

John Peen,  
Constable Harnett,  
John Williams.

*South Carolina.*

Henry Laurens,  
William Henry Drayton,  
John Matthews,  
Richard Hutson,  
Thomas Heyward, jr.

*Georgia.*

John Walton,  
Edward Telfair,  
Edward Longworthy.

# CONSTITUTION

## OF THE UNITED STATES.

---

We, the People of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I.

#### SECTION I.

All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Legislative powers.

#### SECTION II.

The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. Members House of Representatives, how chosen.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. Qualifications of members House of Representatives.

Representatives and direct taxes shall be apportioned among the several States which may be included within the Union, according to their respective numbers, which shall be determined by adding to Apportionment of Representatives.

the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.—The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

Vacancies how filled.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

House of Representatives choose officers.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

### SECTION III.

Senate, how chosen.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Senators classed.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which

shall then fill such vacancies. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. Senator's qualifications.

The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided. Vice President vote.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States. Senate choose officers.

The Senate shall have the sole power to try all impeachments: when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Try impeachments.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. Judgment on impeachment.

#### SECTION IV.

The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Elections, how held.

The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day. Congress assemble annually.

## SECTION V.

- Elections how judged.** Each House shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum
- Quorum, Senate and House of Representatives.** to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.
- Rules.** Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member.
- Journals by each House.** Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and the nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.
- Adjournment.** Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

## SECTION VI.

- Compensation.** The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance on the session of their respective Houses, and in going to or returning from the same: and for any speech or debate in either House, they shall not be questioned in any other place.
- Privileges.**
- Arrests.**
- Members not appointed to office.** No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such



time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

## SECTION VII.

All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose, or concur with, amendments, as on other bills. Bills, revenue, House of Representatives.

Every bill which shall have passed the House of Representatives and the Senate, shall before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but, if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law. Bills, their formalities.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, accord- Resolutions and votes before the President of the United States.

ing to the rules and limitations prescribed in the case of a bill.

## SECTION VIII.

The Congress shall have power—

Congress lay  
taxes.

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

Borrow mon-  
eys.

To borrow money on the credit of the United States:

Commerce &c.

To regulate commerce with foreign nations and among the several States, and with the Indian tribes:

Naturalization,  
&c.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

Coin, &c.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Punish coun-  
terfeiting.

To provide for the punishment of counterfeiting the securities and current coin of the United States:

Post Offices &c  
Promote sci-  
ence.

To establish post offices and post roads:  
To promote the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries:

Congress con-  
stitute courts.

To constitute tribunals inferior to the Supreme Court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

Declare war.

To declare war, to grant letters of marque and reprisal, and make rules concerning captures on land and water:

Raise armies.

To raise and support armies: (but no appropriation of money to that use shall be for a longer term than two years:)

Navy.

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute <sup>Militia.</sup> the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress: <sup>Organize militia.</sup>

To exercise exclusive legislation in all cases <sup>Exclusive jurisdiction - ten miles.</sup> whatsoever, over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And,

To make all laws which shall be necessary and proper for carrying into execution the foregoing <sup>Congress make laws general.</sup> powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

## SECTION IX.

The migration or importation of such persons as <sup>Importation of persons after 1808.</sup> any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall <sup>Habeas corpus.</sup> not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be <sup>Attainder.</sup> passed.

No capitation or other direct tax shall be laid, <sup>Tax.</sup>

unless in proportion to the census or enumeration herein before directed to be taken

**No exportation duty.** No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

**Money, how drawn.** No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

**Titles not conferred.** No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

## SECTION X.

**States not make treaties.** No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

**States not lay imposts, &c.** No State shall, without the consent of the Congress, lay any impost duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No

**O. tonnage.** State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power,

or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

### SECTION I.

The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the representation from

each State having one vote : a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

**Day electors meet.**

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

**Qualifications of President of the United States.**

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

**Removal of President U. States in case.**

In case of the removal of the President from office, of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

**President United States, compensation.**

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected : and he shall not receive within that period any other emolument from the United States, or any of them.

**Oath.**

Before he enters on the execution of his office, he shall take the following oath or affirmation :

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States ; and will, to the best of my ability, preserve,

protect, and defend the Constitution of the United States."

## SECTION II.

The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur: and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint, Ambassadors, or other public Ministers, and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of Departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

## SECTION III.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both Houses, or either of them; and, in case of disagreement between them, with respect to the time of adjourn-

jourment, he may adjourn them to such time as he shall think proper: he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

## SECTION. IV.

Officers removable by impeachment.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

## SECTION I.

Judicial powers and tenure of judges.

The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

## SECTION II.

Judicial power, extension.

The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and



between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make. Supreme Court Jurisdiction.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. Trial by jury.

### SECTION III.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. Attainder.

## ARTICLE IV.

### SECTION I.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. Acts of States accredited.

## SECTION II.

Citizens' privileges.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Persons charged with crimes fleeing.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

## SECTION III.

New States admitted.

New States may be admitted by the Congress into this Union ; but no new States shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Territory of United States.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

## SECTION IV.

Republican form.

The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion ; and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened,) against domestic violence.

## ARTICLE V.

The Congress, whenever two-thirds of both <sup>Amendments, how attained.</sup> houses shall deem it necessary, shall propose amendments to this Constitution ; or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress : *Provided*, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

All debts contracted, and engagements entered <sup>Debts prior to</sup> into, before the adoption of this Constitution, shall <sup>adoption of</sup> be as valid against the United States under this <sup>Constitution.</sup> Constitution as under the Confederation.

This Constitution, and the laws of the United <sup>Treaties, law</sup> States which shall be made in pursuance thereof, <sup>of land.</sup> and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land ; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before men- <sup>Oath or affir-</sup> tioned, and the members of the several State Le- <sup>mation to mem-</sup> gislatures, and all Executive and Judicial officers, <sup>bers.</sup> both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

## Ratification.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

*New Hampshire.*

John Langdon,  
Nicholas Gilman.

*Massachusetts.*

Nathaniel Gorham,  
Rufus King.

*Connecticut.*

William Samuel Johnson,  
Roger Sherman.

*New York.*

Alexander Hamilton.

*New Jersey.*

William Livingston,  
David Brearley,  
William Patterson,  
Jonathan Dayton.

*Pennsylvania.*

Benjamin Franklin,  
Thomas Mifflin,  
Robert Morris,  
George Clymer,  
Thomas Fitzsimmons,  
Jared Ingersoll,  
James Wilson,  
Gouverneur Morris.

Attest:

*Delaware.*

George Reed,  
Gunning Bedford, Jr.,  
John Dickinson,  
Richard Bassett,  
Jacob Broom.

*Maryland.*

James McHenry,  
Daniel of St. Thos. Jenifer,  
Daniel Carroll.

*Virginia.*

John Blair.  
James Madison, Jr.  
*North Carolina*  
William Blount,  
Richard Dobbs Spaight,  
Hugh Williamson.

*South Carolina.*

John Rutledge,  
Charles C. Pinckney,  
Charles Pinckney,  
Pierce Butler.

*Georgia.*

William Ew,  
Abraham Baldwin.

WILLIAM JACKSON, *Secretary.*

## IN CONVENTION.

MONDAY, SEPTEMBER 17, 1787.

*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention that it should afterwards be submitted to a convention of delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled.

*Resolved*, That it is the opinion of this Convention, that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix on a day on which electors should be appointed by the States which shall have ratified the same, and a day on which electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That, after such publication, the electors should be appointed, and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States, in Congress assembled; that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention :

GEO. WASHINGTON, *President*.

WILLIAM JACKSON, *Secretary*.

## IN CONVENTION.

SEPTEMBER 17, 1787.

SIR: We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent Executive and Judicial authorities, should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trusts to one body of men is evident: hence results the necessity of a different organization.

It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw, with precision, the line between those rights which must be surrendered, and those which may be preserved; and, on the present occasion, this difficulty was increased by a difference among the several States, as to their situation, extent, habits and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American—the consolidation of our Union; in which is involved our prosperity, felicity, safety—perhaps our national existence. This important consideration seriously and deeply impressed our minds; and led each State in the convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which

we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not perhaps to be expected ; but each will doubtless consider, that, had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe ; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your excellency's most obedient and humble servants.

By unanimous order of the Convention :

GEO. WASHINGTON, *President.*

*His Excellency, the President of Congress.*

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*The United States in Congress assembled :*

FRIDAY, SEPTEMBER 8, 1787.

Present—New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia ; and from Maryland, Mr. Ross.

Congress having received the report of the Convention lately assembled in Philadelphia,

*Resolved, unanimously,* That the said report, with the resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to submit to a convention of delegates chosen in each State by the people thereof, in conformity to

the resolves of the Convention, made and provided in that case.

CHARLES THOMSON, *Secretary.*

## AMENDMENTS.

### *Article the First.*

No religious establishment, or prohibition of its exercise. Freedom of speech and of the press. Right of petition, &c. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### *Article the Second.*

Right to keep arms. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

### *Article the Third.*

Quartering of soldiers forbidden. No soldier shall, in time of peace, be quartered in any House without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

### *Article the Fourth.*

Rights against unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

### *Article the Fifth.*

Presentment in criminal prosecutions. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases



arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. Private Property held sacred.

### *Article the Sixth.*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence. Trial by jury in criminal prosecutions. Form of trial.

### *Article the Seventh.*

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law. Jury trial in civil cases over \$20.

### *Article the Eighth.*

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Excessive bail.

### *Article the Ninth.*

The enumeration in the Constitution of certain Rights not

granted retained in the people; rights shall not be construed to deny or disparage others retained by the people.

*Article the Tenth.*

Powers not delegated reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*Article the Eleventh.*

Limitation of judicial power.

The Judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.

*Article the Twelfth.*

Election of President and Vice President.

The electors shall meet in their respective States, and vote, by ballot, for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves: they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate: the President of the Senate shall, in the presence of the Senate, and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Repre-

sentatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice President shall be the Vice President, if such a number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

JOINT RESOLUTION OF THE CONGRESS, OF  
THE UNITED STATES FOR ANNEX-  
ING TEXAS.

TWENTY-EIGHTH CONGRESS,

SECOND SESSION.

Begun and held at the city of Washington, in the  
District of Columbia, on Monday the second day  
of December, eighteen hundred and forty-four.

JOINT RESOLUTION,

*For annexing Texas to the United States.*

Consent of Con-  
gress given to  
annexation of  
Texas as a  
State.

RESOLVED by the Senate and House of Represen-  
tatives of the United States of America in Congress  
assembled, That Congress doth consent that the  
territory properly included within, and rightfully  
belonging to the Republic of Texas, may be erect-  
ed into a new State, to be called the State of Texas,  
with a republican form of government, to be adopt-  
ed by the people of said Republic, by deputies in  
convention assembled, with the consent of the exist-  
ing government, in order that the same may be ad-  
mitted as one of the States of this Union.

Conditions and  
guarantees.

Boundaries to  
be adjusted by  
U. States.

State constitu-  
tion to be ad-  
opted and pre-  
sented.

2. And be it further resolved, That the foregoing  
consent of Congress is given upon the following  
conditions, and with the following guarantees, to  
wit: *First.* Said State to be formed, subject to the  
adjustment by this government of all questions of  
boundary that may arise with other govern-  
ments; and the constitution thereof, with the prop-  
er evidence of its adoption by the people of said  
Republic of Texas, shall be transmitted to the  
President of the United States, to be laid before

Congress for its final action, on or before the first day of January, one thousand eight hundred and forty six. *Second.* Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may be long to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri Compromise Line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri Compromise Line, slavery, or involuntary servitude, (except for crime,) shall be prohibited.

What to be ceded to the U. States.

What to be retained.

Public debt of Texas not to become a charge upon the U. States.

New States may be formed out of Texian territory.

Missouri Compromise Line established.

3. And be it further resolved, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Alternative of negotiation left to the President of U. States.

Terms upon  
which Texas  
shall be admit-  
ted as a State.

Appropriation  
for expenses of  
negotiation.

Be it *resolved*, that a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two Houses of Congress, as the President may direct.

J. W. JONES,

Speaker of the House of Representatives.

WILLIE P. MANGUM.

President *pro tempore* of the Senate.

Approved, March 1, 1845.

JOHN TYLER.

JOINT RESOLUTION OF THE CONGRESS  
OF TEXAS CONSENTING TO  
ANNEXATION.

NINTH CONGRESS—REPUBLIC OF TEXAS.

EXTRA SESSION.

JOINT RESOLUTION

Giving the consent of the existing Government to  
the annexation of Texas to the United States.

Whereas, the Government of the United States hath <sup>Preamble.</sup>  
proposed the following terms, guarantees, and  
conditions, on which the people and territory of  
the Republic of Texas may be erected into a  
new State, to be called the State of Texas, and  
admitted as one of the States of the American  
Union, to wit:

*"Resolved by the Senate and House of Representa-  
tives of the United States of America in Congress  
assembled,* That Congress doth consent that the ter- <sup>Consent of</sup>  
ritory properly included within, and rightfully be- <sup>Congress given</sup>  
longing to the Republic of Texas, may be erected <sup>to annexation</sup>  
into a new State, to be called the State of Texas, <sup>of Texas as a</sup>  
with a republican form of Government, to be adopt- <sup>State.</sup>  
ed by the people of said Republic, by deputies  
in Convention assembled, with the consent of the  
existing Government, in order that the same may  
be admitted as one of the States of this Union.

*"2. And be it further resolved,* That the forego- <sup>Conditions and</sup>  
ing consent of Congress is given upon the following <sup>guarantees.</sup>  
conditions, and with the following guarantees, to  
wit:

**Boundaries to be adjusted by U. States.** *“First.* Said State to be formed, subject to the adjustment by this Government of all questions of boundary that may arise with other Governments; and the Constitution thereof, with the proper evidence of its adoption, by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six.

**State Constitution to be adopted and presented.** *“Second.* Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence, belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States.

**What to be ceded to the U. States.** *“Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime), shall be prohibited.”

**What to be retained.** *“Public debt of Texas not to become a charge upon the U. States.* *“New States may be formed out of Texian territory.* *“Missouri Compromise Line established.*



And whereas, by said terms, the consent of the existing government of Texas is required—Therefore,

*Be it resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled,* That the government of Texas doth consent, that the People and territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the People of said Republic, by Deputies, in Convention assembled, in order that the same may be admitted as one of the States of the American Union; and said consent is given on the terms, guarantees and conditions set forth in the Preamble to this Joint Resolution.

Consent of Texas given to annexation as a State.

SEC. 2. *Be it further resolved,* That the proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to sit in Convention, at Austin, on the fourth day of July next, for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Texas.

Consent given to President's proclamation calling convention, and the election of deputies thereto.

SEC. 3. *Be it further resolved,* That the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

President to furnish American Minister, and Convention, with copy of this Joint Resolution.

JOHN M. LEWIS,  
Speaker of the House of Representatives.

K. L. ANDERSON.

President of the Senate.

Approved, June 23, 1845.

ANSON JONES.

IN CONVENTION OF THE PEOPLE OF THE  
REPUBLIC OF TEXAS. JULY 4, 1845.

AN ORDINANCE.

Preamble reciting the official action of the Congress and President of the United States and of the President and Congress of Texas, in regard to annexation.

WHEREAS the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the first day of March one thousand eight hundred and forty-five; and whereas the President of the United States has submitted to Texas the first and second sections of the said resolution, as the basis upon which Texas may be admitted as one of the States of the said Union; and whereas the existing government of the Republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows,

JOINT RESOLUTION FOR ANNEXING TEXAS TO THE UNITED STATES.

*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress doth consent, that the territory, properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

Consent of Congress given to annexation as a State.

Conditions and guarantees.

Boundaries to be adjusted by the U. States.

2nd. *And be it further resolved,* That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First,* Said State to be formed, subject to the adjustment by this government, of all questions of boundary that may arise with other governments;

and the Constitution thereof with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second*, Said State, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means pertaining to the public defence belonging to the said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due & owing to the said Republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States. *Third*, New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such states as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri Compromise Line, shall be admitted into the Union, with or without slavery, as the people of each State, asking admission may desire. And in such State or States, as shall be formed out of said territory; north of said Missouri Compromise Line, slavery or involuntary servitude (except for crime) shall be prohibited.

State Constitution to be adopted and presented.

What to be ceded to the U. States.

What to be retained.

Public debt of Texas.  
New States may be formed out of Texian territory.

Missouri Compromise Line established.

Now, in order to manifest the assent of the people of this Republic as required in the above recited portions of the said resolutions; We the deputies

of the people of Texas in convention assembled in their name and by their authority, do ordain and declare, that we assent to, and accept the proposals, conditions and guarantees contained in the first and second sections of the resolution of the Congress of the United States aforesaid.

Done at the City of Austin, Republic of Texas  
July 4th 1845

THO J RUSK President

PHIL M CUNY	JOS. L. HOGG,
H G RUNNELS	CHAS. S. TAYLOR
ROBERT. M. FORBES	DAVID GAGE
SAM. LUSK	HENRY J JEWETT
JNO. CALDWELL	CAVITT ARMSTRONG
JOSE ANTONIO NAVARRO	JAMES POWER
GEO. WM. BROWN	ALBERT H LATIMER
GUSTAVUS A EVERTS.	WM C YOUNG
LEMUEL DALE EVANS	J PINCKNEY HENDERSON
J B MILLER	NICHOLAS H DARNELL
R, E. B. BAYLOR	EMERY RAINS
J. S. MAYFIELD	A W O HICKS
R. BACHE	JAMES M BURROUGHS
JAMES LOVE	H. L. KINNEY
WM L HUNTER	WILLIAM L. CAZNEAU
JOHN D ANDERSON	A S CUNNINGHAM
ISAAC PARKER	ABNER S. LIPSCOMB
P O LUMPKIN	JOHN HEMPHILL
FRANCIS MOORE JR.	VAN R. IRION
ISAAC W BRASHEAR	VOLNEY E HOWARD.
ALEXANDER MCGOWAN	E H TARRANT
ISAAC VAN ZANDT.	FRANCIS M WHITE
S. HOLLAND	JAMES DAVIS
EDWARD CLARK	GEORGE T. WOOD
GEO. W. SMYTH	G W WRIGHT
JAMES ARMSTRONG	H. R. LATIMER
JOHN M. LEWIS	W. B. OCHILTREE
JAMES SCOTT	OLIVER JONES
ARCHIBALD McNEILL	B. C. BAGBY
A. C. HORTON,	CHS. BELLINGER STEW-
ISRAEL STANDER	ART.

Attest

JAS. H. RAYMOND,  
Secretary of the Convention

# CONSTITUTION\*

## OF THE STATE OF TEXAS

WE the people of the Republic of Texas acknowledge with gratitude the grace, and beneficence of God, in permitting us to make [a] choice of our form of government do in accordance with the provisions of the Joint Resolution for annexing Texas to the United States, approved March 1st, one thousand eight hundred and forty-five ordain and establish this Constitution

Preamble.

### ARTICLE 1st.

#### BILL OF RIGHTS

That the general, great and essential principles of Liberty and Free Government may be recognized and established we declare that—

Object of Bill of Rights.

SECTION 1st. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the unalienable right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

SECTION 2.—All freemen, when they form a social compact, have equal rights; and no man or set of men is entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

Equal rights asserted—exclusive privileges denied.

\*The Constitution, as now printed, has been very carefully compared with, and it conforms literally to the original deposited in the Department of State.—The punctuation also of the original has been strictly followed.

The words or letters included in brackets are found upon the original in pencil, and may have been intended as corrections: but by whom made does not appear.

## CONSTITUTION OF

**Religious test.** SECTION 3.—No religious test shall ever be required as a qualification to any office or public trust in this State.

**Religious liberty and toleration.** SECTION 4.—All men have a natural and indefeasible right to worship God according to the dictates of their own consciences: no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent: no human authority ought, in any case whatever, to control or interfere with the rights of conscience, in matters of religion; and no preference shall ever be given by law to any religious societies or mode of worship. But it shall be the duty of the Legislature to pass such laws as [may] shall be necessary to protect every religious denomination in the peaceable enjoyment of their own mode of public worship.

**Liberty of speech and of the press.** SECTION 5.—Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege: and no law shall ever be passed curtailing the liberty of speech or of the press.

**Evidences in prosecution for libel.** SECTION 6.—In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases.

**Seizure and search.** SEC 7. The people shall be secure in their [persons] houses, papers & possessions from all unreasonable seizures or searches; & no warrant to search any place, or to seize any person or thing, shall issue, without describing them as near as may be; nor without probable cause supported by oath or affirmation.

**Rights of accused persons.** SECTION 8.—In all criminal prosecutions, the accused shall have a speedy public trial, by an impartial jury: he shall not be compelled to give evidence against himself: he shall have the right of being heard by himself or counsel, or both; shall be con-

fronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor: and no person shall be holden to answer for any criminal charge, but on indictment or information, except in cases arising in the land or naval forces, or offences against the laws regulating the militia.

SECTION 9.—All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or the presumption great; but this provision shall not be so construed as to prohibit bail after indictment found, upon an examination of the evidence by a Judge of the Supreme or District Court, upon the return of the [a] writ of *habeas corpus*, returnable in the county where the offence is committed. Bail in certain cases.

SECTION 10.—The privileges of the writ of *habeas corpus* shall not be suspended, except when in case of rebellion or invasion the public safety may require it. Writ of *habeas corpus*.

SECTION 11.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open; and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law. Excessive bail and unusual punishments prohibited. Courts shall be open.

SECTION 12.—No person for the same offence shall be twice put in jeopardy of life or limb, nor shall a person be again put upon trial for the same offence after a verdict of not guilty; and the right of trial by jury shall remain inviolate. Trial by jury inviolate.

SECTION 13.—Every citizen shall have the right to keep and bear arms, in the lawful defence of himself or the State. Right to bear arms.

SECTION 14.—No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made; and no person's property, shall be taken or applied to public use, without adequate compensation being made, unless by the consent of such person. Bill of attainder. Ex post facto and retroactive laws. Laws affecting contracts. Property for public use.

SECTION 15.—No person shall ever be imprisoned for debt. Imprisonment for debt.

Trial by due course of law.

SECTION 16.—No citizen of this State shall be deprived of life, liberty, property, or privileges, outlawed, exiled, or in any manner, disfranchised, except by due course of the law of the land.

Military subordinate to civil authority.

SECTION 17.—The military shall at all times be subordinate to the civil authority.

Perpetuities and monopolies.

SECTION 18.—Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

Primogeniture & entailments. Right of assembling and of petition.

SECTION 19.—The citizens shall have the right in a peaceable manner, to assemble together for their common good, and to apply to those invested with the power[s] of Government for redress of grievances, or other purposes, by petition, address, or remonstrance.

Suspension of laws.

SECTION 20.—No power of suspending laws in this State shall be exercised, except by the Legislature, or its authority.

The rights herein declared shall be excepted out of the general powers of government.

SECTION 21.—To guard against transgressions of the high powers herein delegated, we declare that every thing in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or to the following provisions, shall be void.

## ARTICLE 2nd.

### DIVISION OF THE POWERS OF GOVERNMENT.

Departments of government defined.

SECTION 1.—The powers of the Government of the State of Texas, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy—to wit: those which are Legislative to one—those which are Executive to another and those which are Judicial to another; and no person or collection of persons being of one of those departments, shall exercise any power, properly attached to either of the others, except in the instances herein expressly permitted.



## ARTICLE 3nd.

## LEGISLATIVE DEPARTMENT.

SECTION 1.—Every free male person who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, or who is at the time of the adoption of this Constitution by the Congress of the United States, a citizen of the Republic of Texas, and shall have resided in this State one year next preceeding an election, and the last six months within the district county, city or town, in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted) shall be deemed a qualified elector: and should such qualified elector, happen to be in any other county, situated in the district in which he resides, at the time of an election, he shall be permitted to vote for any district officer,—provided that the qualified electors, shall be permitted to vote anywhere in the State for State officers, and provided further that no soldier, seaman, or marine in the army or navy of the United States, shall be entitled to vote at any election created by this Constitution.

Qualifications  
of electors.  
Where votes  
may be cast.

SECTION 2.—All free male persons over the age of twenty-one years (Indians not taxed, Africans, and descendants of Africans excepted) who shall have resided six months in Texas, immediately preceeding the acceptance of this Constitution by the Congress of the United States shall be deemed qualified electors.

Qualified elec-  
tors.

SECTION 3.—Electors in all cases shall be privileged from arrest during their attendance at elections, and in going to and returning from the same, except in cases of treason, felony, or breach of the peace.

Privileges of  
electors.

SECTION 4.—The Legislative powers of this State, shall be vested in two distinct branches; the one to be styled the Senate, and the other the House of Representatives, and both together the, "Legislature of the State of Texas",—The style of the [all] laws

The Legisla-  
ture.  
Style of laws.

shall be "Be it enacted by the Legislature of the State of Texas."

**Representatives—**  
their term of office.  
**Biennial sessions.**

**SECTION 5.**—The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of the general election. And the sessions of the Legislature shall be biennial, at such times as shall be prescribed by law.

**Qualifications for Representatives.**

**SECTION 6.**—No person shall be a Representative, unless he be a citizen of the United States, or at the time of the adoption of this Constitution a citizen of the Republic of Texas, and shall have been an inhabitant of this State two years next preceeding his election, and the last year thereof a citizen of the county, city or town, for which he shall be chosen, and shall have attained the age of twenty-one years, at the time of his election.

**Elections.**

**SECTION 7.**—All elections by the people shall be held at such time and places in the several counties, cities or towns, as are now, or may hereafter be designated by law.

**Senators—**  
their term of office.

**SECTION 8.**—The Senators shall be chosen by the qualified electors for the term of four years; and shall be divided by lot, into two classes [as] nearly equal as can be. The seats of Senators of the first class shall be vacated at the expiration of the first two years; and of the second class at the expiration of four years; so that one half thereof shall be chosen biennially thereafter.

**How classified.**

**SECTION 9.**—Such mode of classifying new additional Senators shall be observed, as will as nearly as possible preserve an equality of number in each class.

**Senatorial districts.**

**SECTION 10.**—When a Senatorial district shall be composed of two or more counties, it shall not be separated by any county belonging to another district.

**Qualifications for Senators.**

**SECTION 11.**—No person shall be a Senator unless he be a citizen of the United States, or at the time of the acceptance of this Constitution by the Congress of the United States, a citizen of the Republic of Texas; and shall have been an inhabitant

of this State three years next preceeding the election; and the last year thereof a resident of the district for which he shall be chosen, and have attained the age of thirty years.

SECTION 12.—The House of Representatives, when assembled shall elect a Speaker and its other officers, and the Senate shall choose a President for the time being, and its other officers. Each House shall judge of the qualifications and elections of its own members, but contested elections shall be determined in such manner as shall be directed by law: two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Organization of the two Houses.  
Qualifications of members.  
Contested elections.  
Quorum.  
Adjournments.

SECTION 13. Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and with the consent of two-thirds, expel a member, but not a second time for the same offence.

Power of each House over its members.

SECTION 14.—Each House shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present be entered on the Journal[s].

Journals.

SECTION 15.—When vacancies happen in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies.

Vacancies.

SECTION 16.—Senators and Representatives shall in all cases, except in treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles, such member may reside from the place at which the Legislature is convened.

Members privileged.

SECTION 17.—Each House may punish by imprisonment during the session, any person not a member, for disrespectful or disorderly conduct, in its presence; or for obstructing any of its proceedings:

Each House may punish by imprisonment.

provided, such imprisonment shall not at any one time exceed forty-eight hours.

**Open doors.** SECTION 18.—The doors of each House shall be kept open.

**Adjournment.** SECTION 19.—Neither House shall without the consent of the other, adjourn for more than three days: nor to any other place than that in which they may be sitting, without the concurrence of both Houses.

**Passage of bills.** SECTION 20.—Bills may originate in either House, and be amended, altered or rejected by the other; but no bill shall have the force of a law, until on three several days it be read in each House, and free discussion be allowed thereon, unless in case of great emergency, four-fifths of the House in which the bill shall be pending, may deem it expedient to dispense with this rule; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

**Bills for revenue.** SECTION 21.—All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

**Rejected bills.** SECTION 22.—After a bill or resolution has been rejected by either branch of the Legislature, no bill or resolution containing the same substance, shall be passed into a law during the same session.

**Compensation of members.** SECTION 23. Each member of the Legislature shall receive from the public Treasury, a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall be made.

**Eligibility of members.** SECTION 24.—No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which, may have been increased during such term; and no member of either House of the Legislature shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part, by either branch of the Legislature; nor shall the members thereof,

be capable of voting for a member of their own body, for any office whatever, except it be in such cases as are herein provided. The President for the time being of the Senate, and Speaker of the House of Representatives, shall be elected from their respective bodies.

SECTION 25.—No Judge of any court of law or equity, Secretary of State, Attorney General, Clerk of any court of record, Sheriff, or Collector, or any person holding a lucrative office under the United States, or this State, or any foreign government, shall be eligible to the Legislature: nor shall at the same time hold or exercise any two offices, agencies, or appointments of trust or profit, under this State: provided, that officers \* of the militia, to which there is attached no annual salary, or the office of Justice of the Peace, shall not be deemed lucrative.

Persons holding lucrative offices ineligible to the Legislature.

No two offices of trust or profit under the State shall be held or exercised by the same person.

SECTION 26.—No person who at any time may have been a Collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have obtained a discharge for the amount of such collections, and for all public monies with which he may have [been] entrusted.

Collectors or holders of public money ineligible to any office of profit or trust until they have obtained a discharge therefor.

SECTION 27.—Ministers of the Gospel, being by their profession dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions; therefore, no Minister of the Gospel, or Priest of any denomination whatever, shall be eligible to the Legislature.

Ministers of the Gospel ineligible to the Legislature.

SECTION 28.—Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Elections for members of Legislature shall be general.

SECTION 29.—The Legislature shall at their first meeting, and in the year one thousand eight hundred and forty-eight and fifty, and every eight years thereafter, cause an enumeration to be made of all the free inhabitants (Indians not taxed, Africans and descend-

Census.

\* In the original, a pencil mark is drawn through the letter r in the word *officers*.

ants of Africans excepted) of the State, designating particularly the number of qualified electors; and the whole number of Representatives shall at the several periods of making such enumeration be fixed by the Legislature, and apportioned among the several counties, cities or towns, according to the number of free population in each; and shall not be less than forty-five nor more than ninety.

Apportionment  
of representa-  
tives.

SECTION 30.—Until the first enumeration and apportionment under this Constitution, the following shall be the apportionment of Representatives amongst the several counties.—viz—

Temporary ap-  
portionment of  
representatives

The county of Montgomery shall elect four Representatives—the counties [of] Red River, Harrison, Nacogdoches, Harris and Washington, shall elect three Representatives, each—the counties of Fannin, Lamar, Bowie, Shelby, San Augustine, Rusk, Houston, Sabine, Liberty, Robertson, Galveston, Brazoria, Fayette, Colorado, Austin, Gonzales and Bexar two Representatives each—the counties of Jefferson, Jasper, Brazos, Milam, Bastrop, Travis, Matagorda, Jackson, Fort Bend, Victoria, Refugio, Goliad and San Patricio, one Representative each.—

Apportion-  
ment of Sena-  
tors.

SECTION 31.—The whole number of Senators shall at the next session after the several periods of making the enumeration, be fixed by the Legislature, and apportioned among the several districts to be established by law, according to the number of qualified electors, and shall never be less than nineteen; nor more than thirty-three.

Temporary ap-  
portionment of  
Senators.

SECTION 32.—Until the first enumeration, as provided for by this Constitution, the Senatorial districts shall be as follows, to wit: the counties of Fannin and Lamar shall constitute the first district, and shall elect one Senator;—the counties of Red River and Bowie the second district, and elect one Senator;—the counties of Fannin, Lamar, Red River and Bowie, conjointly shall elect one Senator;—the county of Harrison, the third district, shall elect one Senator;—the counties of Nacogdoches, Rusk and Houston, the fourth district, shall elect two Senators; the counties of San Augustine and Shelby,

the fifth district, shall elect one Senator;—the counties of Sabine and Jasper, the sixth district, shall elect one Senator;—the counties of Liberty and Jefferson, the seventh district, shall elect one Senator;—the counties of Robertson and Brazos, the eighth district, shall elect one Senator;—the county of Montgomery, the ninth district, shall elect one Senator: the county of Harris, the tenth district, shall elect one Senator:—the county of Galveston, the eleventh district, shall elect one Senator; the counties of Brazoria and Matagorda, the twelfth district, shall elect one Senator; the counties of Austin and Fort Bend, the thirteenth district, shall elect one Senator; the counties of Colorado and Fayette, the fourteenth district, shall elect one Senator; the counties of Bastrop and Travis, the fifteenth district, shall elect one Senator; the counties of Washington and Milam, the sixteenth district, shall elect one Senator;—the counties of Victoria, Gonzales and Jackson, the seventeenth district, shall elect one Senator;—the county of Bexar, the eighteenth district shall elect one Senator; and the counties of Goliad, Refugio and San Patricio, the nineteenth district, shall elect one Senator.

SECTION 33.—The first session of the Legislature, Seat of Government. after the adoption of this Constitution by the Congress of the United States, shall be held at the City of Austin, the present seat of government, and thereafter, until the year one thousand eight hundred and fifty, after which period the seat of government shall be permanently located by the people.

SECTION 34.—The members of the Legislature shall at their first session, receive from the Treasury of the State, as their compensation, three dollars for each day they shall be in attendance on, and three dollars for every twenty-five miles travelling to and from the place of convening the Legislature. Compensation of members of the Legislature

SECTION 35.—In order to settle permanently the seat of government an election shall be holden throughout the State, at the usual places of holding elections, on the first Monday in March, one thousand eight hundred and fifty, which shall be conduct- Election for seat of government.

ed according to law, at which time, the people shall vote for such place as they may see proper for the seat of government. The returns of said election to be transmitted to the Governor by the first Monday in June: if either place voted for shall have a majority of the whole number of votes cast, then the same shall be the permanent seat of government until the year one thousand eight hundred and seventy, unless the State shall sooner be divided. But in case neither place voted for shall have the majority of the whole number of votes given in, then the Governor shall issue his proclamation for an election to be holden in the same manner, on the first Monday in October one thousand eight hundred and fifty, between the two places, having the highest number of votes at the first election. The election shall be conducted in the same manner as at the first, and the returns made to the Governor, and the place having the highest number of votes shall be the seat of government for the time herein before provided.

## ARTICLE 4.

### JUDICIAL DEPARTMENT

**Judicial power.** SECTION 1.—The judicial power of this State shall be vested in one Supreme Court, in District Courts, and in such inferior courts, as the Legislature may from time to time ordain and establish; and such jurisdiction may be vested in corporation courts, as may be deemed necessary, and be directed by law.

**Supreme court.** SECTION 2.—The Supreme Court shall consist of a Chief Justice and two Associates, any two of whom shall form a quorum.

**Jurisdiction of Supreme court.** SECTION 3.—The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the State; but in criminal cases, and in appeals from interlocutory judgments, with such exceptions and under such regulations as the Legislature shall make. And the Supreme



Court and Judges thereof, shall have power to issue the writ of *habeas corpus* and under such regulations as may be prescribed by law, may issue writs of *mandamus*, and such other writs as shall be necessary to enforce its own jurisdiction, and also compel a Judge of the District Court to proceed to trial and judgment in a cause. And the Supreme Court shall hold its sessions once every year, between the months of October and June inclusive at not more than three places in the State. <sup>Sessions.</sup>

SECTION 4.—The Supreme Court shall appoint its own Clerks, who shall hold their offices for four <sup>Clerk of Su-</sup> years, and be subject to removal by the said court <sup>preme court.</sup> for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

SECTION 5.—The Governor shall nominate, and <sup>Judges of Su-</sup> by and with the advice and consent of two-thirds of <sup>preme court,</sup> the Senate, shall appoint the Judges of the Supreme <sup>appointed by</sup> and District Courts, and they shall hold their offices <sup>Governor and</sup> for six years. <sup>Senate.</sup>

SECTION 6.—The State shall be divided into convenient Judicial districts. For each district, there shall be elected [appointed] a Judge who shall reside in the same, and hold the Courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law. <sup>Judicial districts & Judges.</sup>

SECTION 7.—The Judges of the Supreme Court shall receive a salary not less than two thousand <sup>Salaries of</sup> dollars annually, and the Judges of the District <sup>Judges.</sup> Court a salary not less than seventeen hundred and fifty dollars annually; and the salaries of the Judges shall not be increased or diminished during their continuance in office.

SECTION 8.—The Judges of the Supreme and District Courts, shall be removed by the Governor, on the address of two-thirds of each House of the Legislature, for wilful neglect of duty or other reasonable cause which shall not be sufficient ground for impeachment: provided however, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals, of each House; and provided <sup>Removal from office.</sup>

further, that the cause or causes, shall be notified to the Judge so intended to be removed; and he shall be admitted to a hearing in his own defence before any vote for such address shall pass: And in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

**Judges to be conservators of the peace.** SECTION 9.—All Judges of the Supreme and District Courts, shall by virtue of their offices be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the "State of Texas," and conclude, "against the peace and dignity of the State."

**Jurisdiction & powers of district courts.** SECTION 10.—The District Court shall have original jurisdiction of all criminal cases of all suits in behalf of the State to recover penalties forfeitures and escheats, and of all cases of divorce, and of all suits, complaints and pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at, or amount to one hundred dollars, exclusive of interest; and the said Courts, or the Judges thereof, shall have power to issue all writs, necessary to enforce their own jurisdiction and to\* give them a general superintendence and control over inferior jurisdictions. And in the trial of all criminal cases, the jury trying the same shall find and assess the amount of punishment to be inflicted, or fine imposed; except in capital cases, and where the punishment or fine imposed, shall be specifically imposed by law.

**Jury to assess certain fines.** SECTION 11.—There shall be a Clerk of the District Courts for each county who shall be elected by the qualified voters for members of the Legislature, and who shall hold his office for four years, subject to removal by information, or by presentment of a grand jury and conviction by a petit jury.—In case of vacancy, the Judge of the District have the power to

**Clerk of district court.**

\* This word to, in the original is crossed out by a pencil mark.

appoint a Clerk, until a regular election can be held.

SECTION 12.—The Governor shall nominate and by and with the advice and consent of two-thirds of the Senate appoint an Attorney General, who shall hold his office for two years, and there shall be elected by joint vote of both Houses of the Legislature, a District Attorney for each District, who shall hold his office for two years; and the duties, salaries and perquisites of the Attorney General and District Attorney's shall be prescribed by law.

Attorney General.

SECTION 13.—There shall be appointed for each county a convenient number of Justice's of the Peace, one Sheriff, one Coroner, and a sufficient number of Constables, who shall hold their offices for two years, to be elected by the qualified voters of the district or county, as the Legislature may direct. Justices of the Peace, Sheriffs and Coroners shall be commissioned by the Governor. The Sheriff shall not be eligible more than four years in every six.

Justices of the Peace, Sheriff, Coroner, and Constables.  
Term of office

SECTION 14.—No Judge shall set in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or where he shall have been of counsel in the cause. When the Supreme Court or any two of its members shall be thus disqualified to hear and determine any cause or causes in said Court, or when no judgment can be rendered in any case or cases in said Court, by reason of the equal division of opinion of said Judges, the same shall be certified to the Governor of the State who shall immediately commission the requisite number of persons learned in the law for the trial and determination of said case or cases. When the Judges of the District Court are thus disqualified, the parties may, by consent appoint a proper person to try the said case; and the Judges of the said Courts, may exchange districts, or hold Courts for each other, when they may deem it expedient, and shall do so when directed by law. The disqualifications of Judges of

Cases wherein Judges shall not sit.

Special Judges may be appointed by the Governor or the parties litigant.

Judges may interchange.

inferior tribunals, shall be remedied as may hereafter be by law prescribed.

**Inferior Courts.** SECTION 15.—Inferior tribunals shall be established in each county for appointing guardians, granting letters testamentary and of administration; for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and the District Courts shall have original and appellate jurisdiction, and general control over the said inferior tribunals, and original jurisdiction and control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law.

**Equity cases.** SECTION 16.—In the trial of all causes in equity in the District Court, the plaintiff or defendant, shall, upon application made in open Court, have the right of trial by jury, to be governed by the rules and regulations prescribed in trials at law.

**Justices' jurisdiction.** SECTION 17.—Justices of the Peace shall have such civil and criminal jurisdiction as shall be provided for by law.

**Trial by jury.** SECTION 18.—In all causes arising out of a contract, before any inferior judicial tribunal, when the amount in controversy shall exceed ten dollars, the plaintiff or defendant shall upon application to the presiding officer have the right of trial by jury.

**Accused entitled to jury trial.** SECTION 19.—In all cases where Justices of the Peace, or other judicial officers of inferior tribunals shall have jurisdiction in the trial of causes, where the penalty for the violation of a law is fine or imprisonment (except in cases of contempt) the accused shall have the right of trial by jury.

## ARTICLE 5.

## EXECUTIVE DEPARTMENT

SECTION 1.—The supreme executive power of this State shall be vested in the Chief Magistrate, who shall be styled the Governor of the State of Texas.

SECTION 2.—The Governor shall be elected by the qualified electors of the State, at the time and places of elections for members of the Legislature.

SECTION 3.—The returns of every election for Governor, until otherwise provided by law, shall be made out, sealed up, and transmitted to the Seat of Government, and directed to the Speaker of the House of Representatives, who shall, during the first week of the session of the Legislature thereafter, open and publish them in the presence of both houses of the Legislature; the person having the highest number of votes, and being constitutionally eligible, shall be declared by the Speaker, under the direction of the Legislature to be Governor; but if two or more persons shall have the highest and an equal number of votes, one of them shall be immediately chosen Governor by joint vote of both Houses of the Legislature. Contested elections for Governor shall be determined by both Houses of the Legislature.

SECTION. 4.—The Governor shall hold his office for the term of two years from the regular time of installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a citizen of the United States, or a citizen of the State of Texas, at the time of the adoption of this Constitution and shall have resided in the same three years immediately preceding his election.

SECTION 5.—He shall at stated times, receive a compensation for his services which shall not be increased or diminished, during the term for which he shall have been elected. The first Governor

shall receive an annual salary of two thousand dollars and no more.

**Commander in Chief.** SECTION 6.—The Governor shall be Commander-in-Chief of the army and navy of this State, and of the militia except when they shall be called into the service of the United States.

**May require information to be given.** SECTION 7.—He may require information in writing from the officers of the Executive Department, on any subject relating to the duties of their respective offices.

**May convene and adjourn Legislature in certain cases.** SECTION 8.—He may by proclamation on extraordinary occasions convene the Legislature at the Seat of Government, or at a different place, if that should be in the actual possession of a public enemy: In case of disagreement between the two Houses, with respect to adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next regular meeting of the Legislature.

**Shall communicate with the Legislature.** SECTION 9.—He shall from time to time give to the Legislature information, in writing, of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

**Shall see laws executed.** SECTION 10.—He shall take care that the laws be faithfully executed.

**May grant reprieves and pardons, and remit fines and forfeitures.** SECTION 11.—In all criminal cases, except in those of treason and impeachment, he shall have power, after conviction, to grant reprieves and pardons; and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. In cases of treason: he shall have power by and with the advice and consent of the Senate, to grant reprieves and pardons, and he may, in the recess of the Senate, respite the sentence, until the end of the next session of the Legislature.

**Lieutenant Governor.** SECTION 12.—There shall also be a Lieutenant Governor who shall be chosen at every election for Governor, by the same persons, and in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish for whom they vote as Governor, and

**Election.**

for whom as Lieutenant Governor. The Lieutenant Governor shall, by virtue of his office, be President of the Senate, and have, when in committee of the whole, a right to debate and vote on all questions, and when the Senate is equally divided to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor, until another be chosen at the periodical election, and be duly qualified, or until the Governor impeached, absent, or disabled, shall be acquitted, return, or his disability be removed.

His right and duties as such.

SECTION 13.—Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own members as President for the time being. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall die, resign, refuse to serve, or be removed from office, or be unable to serve, or if he shall be impeached, or absent from the State, the President of the Senate for the time being, shall in like manner administer the government until he shall be superceded by a Governor or Lieutenant Governor; the Lieutenant governor shall, whilst he acts as President of the Senate receive for his services the same compensation which shall be allowed to the Speaker of the House of Representatives, and no more, and during the time he administers the government as Governor, shall receive the same compensation which the Governor would have received had he been employed in the duties of his office, and no more,—The President for the time being of the Senate shall, during the time he administers the government, receive in like manner the same compensation which the Governor would have received, had he been employed in the duties of his office. If the Lieutenant Governor shall be required to administer the government, and shall,

His rights and duties while acting as Governor.

whilst in such administration die, resign, or be absent from the State, during the recess of the Legislature, it shall be the duty of the Secretary of State, to convene the Senate for the purpose of choosing a President for the time being.

State Seal.

SECTION 14.—There shall be a seal of the State, which shall be kept by the Governor and used by him officially. The said seal shall be a star of five points, encircled by an olive and live-oak branches, and the words "The State of Texas."

Commissions.

SECTION 15.—All commissions shall be in the name and by the authority of the State of Texas, be sealed with the State Seal, signed by the Governor and attested by the Secretary of State.

Secretary of State.

Term of office.

Duties.

SECTION 16.—There shall be a Secretary of State who shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office during the term of service of the Governor elect—He shall keep a fair register of all official acts and proceedings of the Governor, and shall when required lay the same and all papers minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law.

Approval of laws.

Veto power.

SECTION 17.—Every bill which shall have passed both Houses of the Legislature shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated who shall enter the objections at large upon the journals and proceed to reconsider it; if, after such reconsideration two thirds of the members present shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be re-considered; if approved by two-thirds of the members present, of that house, it shall become a law: But in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for or against the bill, shall be entered on the journals of each House respectively; if any bill shall not be returned by

Bills not re-



the Governor within five days, Sunday's excepted, after it shall have been presented to him, the same shall be a law, in like manner, as if he had signed it. Every bill presented to the Governor one day previous to the adjournment of the Legislature, and not returned to the House in which it originated before its adjournment, shall become a law, and have the same force and effect as if signed by the Governor.

SECTION 18.—Every order resolution or vote, to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him; or, being disapproved, shall be re-passed by both Houses, according to the rules and limitations, prescribed in the case of a bill.

Joint resolutions, orders &c., to be approved by the Governor.

SECTION 19.—The Governor by and with the advice and consent of two thirds of the Senate shall appoint a convenient number of Notaries Public, not exceeding six for each county, who in addition to such duties as are prescribed by law, shall discharge such other duties as the Legislature may from time to time prescribe.

Notaries Public.

SECTION 20.—Nominations to fill all vacancies that may have occurred during the recess, shall be made to the Senate during the first ten days of its session. And should any nomination so made be rejected, the same individual shall not again be nominated during the session to fill the same office. And should the Governor fail to make nominations to fill any vacancy during the session of the Senate, such vacancy shall not be filled by the Governor, until the next meeting of the Senate.

Nominations.

SECTION 21.—The Governor shall reside during the session of the Legislature, at the place where the sessions may be held, and at all other times whenever, in their opinion the public good may require.

Governor's residence.

SECTION 22.—No person holding the office of Governor, shall hold any other office or commission, civil or military.

Governor to hold no other office.

State Treasurer. SECTION 23.—A State Treasurer, and Comptroller  
Comptroller of of public accounts shall be biennially elected, by the  
Public Ac'nts. joint ballot of both Houses of the Legislature, and  
in case of vacancy in either of said offices, during  
the recess of the Legislature, such vacancy shall be  
filled by the Governor, which appointment shall  
continue until the close of the next session of the  
Legislature thereafter.

## ARTICLE 6.

### MILITIA

Militia to be or- SECTION 1.—The Legislature shall provide by  
ganized and law for organizing and disciplining the militia of  
disciplined. this State, in such manner as they shall deem ex-  
pedient, not incompatible with the Constitution  
and laws of the United States in relation thereto.

Conscientious SECTION 2.—Any person who conscientiously  
scruples. scruples to bear arms shall not be compelled to do  
so, but shall pay an equivalent for personal ser-  
vice.

Ministers of SECTION 3.—No licensed Minister of the Gospel  
the Gospel ex- shall be required to perform Military duty, work  
empt from mil- on roads, or serve on juries in this State.  
itary, road, or  
jury service.

Governor may SECTION 4.—The Governor shall have power to  
call out militia call forth the militia to execute the laws of the  
for certain pur- State, to suppress insurrections and to repel inva-  
poses. sions.

## ARTICLE 7.

### GENERAL PROVISIONS

SECTION 1.—Members of the Legislature and all  
officers, before they enter upon the duties of their

offices shall take the following oath or affirmation. "I, (A. B) do solemnly swear (or affirm) that I will faithfully and impartially discharge and perform, all the duties incumbent on me as \_\_\_\_\_, according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State: And I do further solemnly swear (or affirm) that since the adoption of this Constitution by the Congress of the United States, I being a citizen of this State, have not fought a duel with deadly weapons, within this State, nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted, any person thus offending—so help me God."

Official oath.

Duelling oath.

SECTION 2.—Treason against this State shall consist only in levying war against it, or in adhering to its enemies—giving them aid and comfort; and no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Treason.

SECTION 3.—Every person shall be disqualified from holding any office of trust or profit in this State, who shall have been convicted of having given or offering a bribe to procure his election or appointment.

Bribery.

SECTION 4.—Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Persons convicted of bribery, perjury, &amp;c excluded from certain privileges. Free suffrage secured.

SECTION 5.—Any citizen of this State who shall after the adoption of this Constitution, fight a duel with deadly weapons, or send or except a challenge to fight a duel with deadly weapons, either within the State or out of it, or who shall act as second, or knowingly aid and assist, in any manner, those thus offending, shall be deprived of holding any office of trust or profit under this State.

Persons fighting a duel, or sending or accepting a challenge, excluded from office.

**Popular elections.** **Elections by the Legislature** SECTION 6.—In all elections by the people the vote shall be by ballot until the Legislature shall otherwise direct; and in all elections by the Senate and House of Representatives, jointly or seperately, the vote shall be given *viva voce* except in the election of their officers.

**Compensation of officers &c. to be provided for by law.** SECTION 7.—The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for by this Constitution, and shall not grant extra compensation to any officer, agent, servant, or public contractor, after such public service shall have been performed, or contract entered into for the performance of the same; nor grant by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual on a claim real or pretended, where the same shall not have been provided for by pre-existing law: Provided, that nothing in this section shall be so construed as to effect the claims of persons against the Republic of Texas, heretofore existing.

**No extra compensation allowed.** SECTION 8.—No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except for purposes of education; and no appropriation for private or individual purposes or for purposes of internal improvement, shall be made, without the concurrence of two-thirds of both Houses of the Legislature. A regular statement and account of the receipts and expenditures of all public money shall be published annually in such manner as shall be prescribed by law. And in no case shall the Legislature have the power to issue "Treasury Warrants," "Treasury Notes," or paper of any discription intended to circulate as money.

**Appropriations** SECTION 9.—All civil officers shall reside within the State; and all district, or county officers, within their districts or counties; and shall keep their offices at such places therein, as may be required by law.

**Statement of receipts and expenditures to be published annually.** SECTION 10.—The duration of all offices not fixed

**Paper intended to circulate as money prohibited.**

**Residence of officers.**

**Duration of offices.**

by this Constitution shall never exceed four years:

SECTION 11.—Absence on the business of this State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected, or appointed to any office, under the exceptions contained in this Constitution. Absences.

SECTION 12.—The Legislature shall have power, to provide for deductions from the salaries of public officers, who may neglect the performance of any duty that may be assigned them by law. Deductions from salaries for neglect of duty.

SECTION 13.—No member of Congress, nor person holding, or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature or hold or exercise any office of profit or trust under this State. Members of Congress, and persons holding office under the federal or a foreign government ineligible.

SECTION 14.—The Legislature shall provide for a change of venue in civil and criminal cases; and for the erection of a Penitentiary at as early a day as practicable. Change of venue. Penitentiary.

SECTION 15.—It shall be the duty of the Legislature, to pass such laws as may be necessary and proper, to decide differences by arbitration, when the parties shall elect that method of trial. Arbitration.

SECTION 16.—Within five years after the adoption of this Constitution, the laws civil and criminal shall be revised, digested, arranged and published in such manner as the Legislature shall direct, and a like revision, digest, and publication, shall be made every ten years thereafter. Revision and digest of laws.

SECTION 17.—No Lottery shall be authorized by this State: And the buying or selling of Lottery Tickets within this State, is prohibited. Lotteries.

SECTION 18.—No divorce shall be granted by the Legislature. Divorce.

SECTION 19.—All property both real and personal of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her sepe- Marital rights.

rate property, as that held in common with her husband. Laws shall also be passed providing for the registration of the wives separate property.

Rights of property and action secured.

SECTION 20.—The rights of property and of action which have been acquired under the Constitution and laws of the Republic of Texas shall not be divested; nor shall any rights or actions, which have been divested, barred, or declared null and void, by the Constitution and laws of the Republic of Texas, be re-invested, revis[v]ed or reinstated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution.

Void claims grants & titles.

SECTION 21.—All claims, locations, surveys grants and titles to land, which are declared null and void by the Constitution of the Republic of Texas, are, and the same shall, remain forever null and void.

Property exempt from forced sale.

SECTION 22.—The Legislature shall have power to protect by law from forced sale a certain portion of the property of all heads of families. The homestead of a family not to exceed two hundred acres of land (not included in a town or city) or any town or city lot or lots in value not to exceed two thousand dollars, shall not be subject to forced sale, for any debts hereafter contracted, nor shall the owner if a married man, be at liberty to alienate the same, unless by the consent of the wife, in such manner as the legislature may hereafter point out.

Official terms to be regulated

SECTION 23.—The Legislature shall provide in what cases officers shall continue to perform the duties of their offices, until their successors shall be duly qualified.

Laws to embrace but one object.

SECTION 24. Every law enacted by the Legislature, shall embrace but one object, and that shall be expressed in the title.

Amendments.

SECTION 25.—No law shall be revised or amended by reference to its title; but in such case the act revised, or section amended, shall be re-enacted and published at length.

No person to hold more than one office.

SECTION 26.—No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace.

**SECTION 27.**—Taxation shall be equal and uniform throughout the State—All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two-thirds of both Houses of the Legislature may think proper to exempt from taxation. The Legislature shall have power to lay an income tax, and to tax all persons pursuing any occupation trade or profession: Provided, that the term occupation, shall not be construed to apply to pursuits, either agricultural or mechanical. Taxation.

**SECTION 28.**—The Legislature, shall have power to provide by law for exempting from taxation, two hundred and fifty dollars worth of the household furniture or other property belonging to each family in this State. Property exempt from taxation.

**SECTION 29.**—The Assessor & Collector of taxes, shall be appointed in such manner, and under such regulations, as the Legislature may direct. Assessors and Collectors of taxes.

**SECTION 30.**—No corporate body shall hereafter be created renewed, or extended, with banking or discounting privileges. Banking prohibited.

**SECTION 31.**—No private corporation shall be created, unless the bill creating it shall be passed by two-thirds of both Houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise. And the State shall not be part owner of the stock, or property, belonging to any corporation. Two-thirds of Legislature may pass or repeal acts for private corporations. State shall not own stock in such corporations.

**SECTION 32.**—The Legislature shall prohibit by law individuals from issuing bills, checks, promissory notes, or other paper to circulate as money. Individuals prohibited from issuing paper to circulate as money.

**SECTION 33.**—The aggregate amount of debts hereafter contracted by the Legislature, shall never exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrections. And in no case shall any amount be borrowed, except by a vote of two-thirds of both houses of the Legislature. State debts. Loans.

**SECTION 34.**—The Legislature shall at the first session thereof, and may at any subsequent session, New counties.

establish new counties for the convenience of the inhabitants of such new county or counties. Provided, that no new county shall be established, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles (except the county of Bowie) unless by consent of two-thirds of the Legislature, nor shall any county be laid off of less contents. Every new county as to the right of suffrage and representation, shall be considered as part of the county or counties from which it was taken until entitled by numbers to the right of separate representation.

Domicil inviolable.

SECTION 35.—No soldier shall in time of peace be quartered in the house or within the enclosure of any individual without the consent of the owner, nor in time of war, but in a manner prescribed by law.

Salaries of Governor and Judges.

SECTION 36.—The salaries of the Governor, and Judges of the Supreme, and District Courts, are hereby fixed at the minimum established in the Constitution, and shall not be increased for ten years.

#### MODE OF AMENDING THE CONSTITUTION.

Mode of amending Constitution.

SECTION 37.—The Legislature whenever two-thirds of each House shall deem it necessary may propose amendments to this Constitution: Which proposed amendments shall be duly published in the public prints of the State, at least three months before the next general election of Representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next election which shall be thus holden, to open a poll for and make a return to, the Secretary of State, of the names of all those voting for Representatives, who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this State, voting for Representatives have voted in favor of such proposed amendments, and two-thirds of each House of the next Legislature, shall after such election, and before



another ratify the same amendments by yeas and nays, they shall be valid to all intents and purposes, as parts of this Constitution ; Provided, that the said proposed amendments shall at each of the said sessions have been read on three several days, in each House.

## ARTICLE 8.

### SLAVES.

SECTION 1. The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, nor without paying their owners previous to such emancipation, a full equivalent in money for the slaves so emancipated. Emancipation of slaves.

—They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves, by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State ; Provided, that such slave be the *bona fide* property of such emigrants—provided also that laws shall be passed to inhibit the introduction into this State of slaves who have committed high crimes, in other states or territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge.—They shall have full power to pass laws, which will oblige the owners of slaves to treat them with humanity, to provide for their necessary food and clothing, to abstain from all injuries to them extending to life or limb, and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from such owner, and sold for the benefit of such owner or owners. They may pass laws to prevent slaves from being brought into this State as merchandize only. Immigrant slaves.

Laws may be passed concerning emancipation, and treatment of slaves; and against their introduction into the State.

**Trial by jury secured to slaves.** SECTION 2.—In the prosecution of slaves for crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of an impartial trial by a petit jury.

**Offences against life, or person of slaves.** SECTION 3.—Any person who shall maliciously dismember, or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offence had been committed upon a free white person, and on the like proof—except in case of insurrection of such slave.

## ARTICLE 9.

### IMPEACHMENT

**Impeachment.** SECTION 1. The power of impeachment shall be vested in the House of Representatives.

**Trial of impeachments.** SECTION 2.—Impeachment of the Governor, Lieutenant Governor, Attorney-General, Secretary of State, Treasurer, Comptroller, and of the Judges of the District Courts, shall be tried by the Senate.

**Senate shall try impeachments.** SECTION 3.—Impeachments of Judges of the Supreme Court, shall be tried by the Senate.—When sitting as a Court of impeachment, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

**Extent of judgment.** SECTION 4.—Judgment in cases of impeachment, shall extend only to removal from office, and disqualification from holding any office of honor, trust, or profit, under this State, but the parties convicted shall nevertheless be subject to indictment, trial and punishment, according to law.

**Officers impeached shall be suspended.** SECTION 5.—All officers against whom articles of impeachment may be preferred, shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment: The appointing power may make a provisional appointment

to fill the vacancy occasioned by the suspension of an officer, until the decision on the impeachment.

SECTION 6.—The Legislature shall provide for the trial, punishment, and removal from office, of all other officers of the State by indictment or otherwise. Laws made for the trial, punishment and removal of officers.

## ARTICLE 10.

### EDUCATION.

SECTION 1. A general diffusion of knowledge Public schools being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this State to make suitable provisions for the support and maintenance of public schools.

SECTION 2.—The Legislature shall as early as practicable establish free schools throughout the State, and shall furnish means for their support, by Provision for free schools by taxation. taxation on property: And it shall be the duty of the Legislature to set apart not less than one-tenth of the annual revenue of the State derivable from taxation, as a perpetual fund, which fund shall be appropriated to the support of free public schools, and no law shall ever be made diverting said fund to any other use; and until such time as the Legislature shall provide for the establishment of such schools in the several Districts of the State, the fund thus created shall remain as a charge against the State, passed to the credit of the free common school fund.

SECTION 3.—All public lands which have been heretofore, or which may hereafter be granted for public schools, to the various counties, or other political divisions in this State, shall not be alienated in fee, nor disposed of otherwise than by lease for a term not exceeding twenty years, in such manner as the Legislature may direct. School lands to be leased only.

School lands to  
new counties.

SECTION 4.—The several counties in this State which have not received their quantum of lands for the purposes of education shall be entitled to the same quantity heretofore appropriated by the Congress of the Republic of Texas to other counties.

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## ARTICLE 11.

Fraudulent  
land claims.

SECTION 1st. All certificates for head-right claims to land, issued to fictitious persons, or which were forged, and all locations and surveys thereon, are, and the same were null and void from the beginning.

Courts to be op-  
en for estab-  
lishment of cer-  
tain land  
claims, until a  
certain period.

SECTION 2.—The District Courts shall be opened until the first day of July, one thousand eight hundred and forty-seven, for the establishment of certificates for head-rights, not recommended by the Commissioners appointed under the act, to detect fraudulent land certificates, and to provide for issuing patents to legal claimants; and the parties suing shall produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application for the said certificates, and all certificates above referred to, not established or sued upon before the period limited, shall be barred, and the said certificates, and all locations and surveys thereon, shall be forever null and void—and all re-locations made on such surveys, shall not be disturbed until the certificates are established as above directed.

## ARTICLE 12.

## LAND OFFICE

SECTION 1.—There shall be one general land office in the State, which shall be at the Seat of Government, where all titles which have heretofore emanated, or may hereafter emanate from Government, shall be registered; and the Legislature may establish from time to time such subordinate offices as they may deem requisite.

General land office.  
Subordinate offices.

## ARTICLE 13.

## SCHEDULE.

SECTION 1.—That no inconvenience may arise from a change of separate natural [national] Government to a State Government, it is declared, that all process, which shall be issued in the name of the Republic of Texas, prior to the organization of the State government under this Constitution, shall be as valid as if issued in the name of the State of Texas.

Process issued under Republic to be valid.

SECTION 2.—The validity of all bonds and recognizances, executed in conformity with the Constitution and laws of the Republic of Texas, shall not be impaired by the change of government, but may be sued for, and recovered in the name of the Governor of the State of Texas, and all criminal prosecutions or penal actions, which shall have arisen, prior to the organization of the State government under this Constitution, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution in the name of said State. All suits at law and equity which may be depending in any of the Courts of the Republic of Texas, prior to the organization of the State government under this

Bonds, proceedings, &c., to be valid.

Constitution shall be transferred to the proper court of the State, which shall have jurisdiction of the subject matter thereof.

Laws to be continued in force.

SECTION 3.—All laws and parts of laws now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States, the joint resolutions for annexing Texas to the United States, or to the provisions of this Constitution, shall continue and remain in force, as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof.

Fines, forfeitures, and escheats.

SECTION 4.—All fines, penalties, forfeitures, and escheats which have accrued to the Republic of Texas under the Constitution and laws, shall accrue to the State of Texas; and the Legislature shall by law, provide a method for determining what lands may have been forfeited or escheated.

Vote to be taken on Constitution.

SECTION 5.—Immediately after the adjournment of this Convention, the President of the Republic shall issue his proclamation, directing the Chief Justices of the several counties of this Republic, and the several Chief Justices and their associates, are hereby required to cause polls to be opened in their respective counties, at the established precincts, on the second Monday of October next, for the purpose of taking the sense of the people of Texas, in regard to the adoption or rejection of this Constitution, and the votes of all persons entitled to vote under the existing laws or this Constitution shall be received. Each voter shall express his opinion by declaring a "*viva voce*"\* for "the Constitution accepted" or "the Constitution rejected," or some words clearly expressing the intention of the voter—and at the same time the vote shall be taken in like manner for and against annexation. The election shall be conducted in conformity with the existing laws regulating elections, and the Chief Justices of the several counties, shall carefully and promptly make duplicate returns of

\*A pencil line has been drawn through the letter *i* in the word *voice* in the original.

said polls, one of which [shall] be transmitted to the Secretary of State of the Republic of Texas, and the other deposited in the Clerk's office of the county court.

SECTION 6.—Upon the receipt of the said returns, or on the second Monday of November next, if the returns be not sooner made, it shall be the duty of the President, in presence of such officers of his cabinet as may be present, and of all persons who may choose to attend to compare the votes given for the ratification or rejection of this Constitution, and if it should appear, from the returns, that a majority of all the votes given, is for the adoption of the Constitution, then it shall be the duty of the President to make proclamation of that fact, and thenceforth this Constitution shall be ordained and established as the Constitution of the State, to go into operation, and be of force and effect, from and after the organization of the State government, under this Constitution: and the President of this Republic is authorized and required, to transmit to the President of the United States, duplicate copies of this Constitution, properly authenticated, together with certified statements of the number of votes given for the ratification thereof, and the number for rejection; one of which copies shall be transmitted by mail, and one copy by a special messenger, in sufficient time to reach the seat of government of the United States, early in December next.

SECTION 7.—Should this Constitution be accepted by the people of Texas, it shall be the duty of the President, on or before, the second Monday in November next, to issue his proclamation directing and requiring elections to be holden in all the counties of this Republic on the third Monday in December next, for the office of Governor, Lieutenant Governor, members of the Senate and House of Representatives of the State Legislature in accordance with the apportionment of representation directed by this Constitution. The returns for members of the Legislature of this State, shall be made to the Department of State of this Republic, and those for

Vote to be counted.

Result to be proclaimed by President.

Copies of Constitution to be transmitted to President of U. States.

Election for Governor, Lieutenant Governor and members of the Legislature.

Governor and Lieutenant Governor, shall be addressed to the Speaker of the House of Representatives, endorsed "Election Returns of \_\_\_\_\_ county for Governor," and directed to the Department of State; and should from any cause whatever, the Chief Justices of counties fail to cause to be holden any of the polls or elections provided for by this Constitution at the times and places herein directed, the people of the precincts where such failure exists, are hereby authorized to choose managers, judges, and other officers to conduct said elections.

Legislature to be convened, and State government organized.

SECTION 8.—Immediately on the President of the Republic receiving official information of the acceptance of this Constitution by the Congress of the United States, he shall issue his proclamation convening at an early day, the Legislature of the State of Texas at the Seat of Government established under this Constitution, and after the said Legislature shall have organized, the Speaker of the House of Representatives, shall in presence of both branches of the Legislature open the returns of the elections, for Governor and Lieutenant Governor, count and compare the votes, and declare the names of the persons who shall be elected to the offices of Governor, and Lieutenant Governor, who shall forthwith be enstalled in their respective offices, and the Legislature shall proceed as early as practicable to elect Senators to represent this State in the Senate of the United States; and also provide for the election of Representatives to the Congress of the United States. The Legislature shall also adopt such measures as may be required to cede to the United States, at the proper time, all public edifices, fortifications, barracks, ports, harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means pertaining to the public defence, now belonging to the Republic of Texas; and to make the necessary preparations for transferring to the said United States, all custom

Senators and Representatives in Congress to be elected.

Cession to be made to the United States.

\*This word is crossed out by a pencil mark, upon the original roll.



houses and other places for the collection of impost duties and other foreign revenues.

SECTION 9.—It shall be the duty of the President of Texas, immediately after the inauguration of the Governor, to deliver to him all records—public money, documents, archives, and public property of every description whatsoever, under the control of the executive branch of the government; and the Governor shall dispose of the same in such manner as the Legislature may direct.

President to deliver over the government and public property to the Governor.

SECTION 10.—That no inconvenience may result from the change of government, it is declared that the laws of this Republic relative to the duties of officers both civil and military of the same, shall remain in full force, and the duties of their several offices shall be performed in conformity with the existing laws, until the organization of the government of the State, under this Constitution, or until the first day of the meeting of the Legislature.—That then the offices of President, Vice-President of the President's Cabinet, Foreign Ministers, Charges and agents and others repugnant to this Constitution, shall be superseded by the same, and that all others shall be holden and exercised until they expire by their own limitation, or be superseded by the authority of this Constitution or laws made in pursuance thereof.

Laws defining the duties of officers to remain in force until changed by State Constitution or further Legislation.

SECTION 11.—In case of any disability on the part of the President of the Republic of Texas to act as herein required, it shall be the duty of the Secretary of State of the Republic of Texas, and in case of disability on the part of the Secretary of State, then it shall be the duty of the Attorney General, of the Republic of Texas to perform the duties assigned to the President.

Secretary of State or Attorney General to act in case of the disability of the President.

SECTION 12.—The first General election for Governor, Lieutenant Governor and members of the Legislature after the organization of the government shall take place on the first Monday in November, one thousand eight hundred and forty-seven, and shall be held biennially thereafter, on the first Monday in November, until otherwise provided.

Time of general election for Governor and Lieutenant Governor.

ded by the Legislature. And the Governor and Lieutenant Governor, elected in December next, shall hold their offices, until the installation in office of the Governor and Lieutenant Governor to be elected in the year, one thousand eight hundred and forty-seven.

Ordinance 4th  
of July, 1845,  
made a part of  
this Constitu-  
tion.

SECTION 13.—The ordinance passed by the Convention on the fourth day of July, assenting to the overtures for the annexation of Texas to the United States, shall be attached to this Constitution and form a part of the same.

Done in Convention by the Deputies of the people of Texas, at the City of Austin, this twenty-seventh day of August, in the year of our Lord, one thousand eight hundred and forty-five

In testimony whereof, we have hereunto subscribed our names.

THO J RUSK President

JOHN D ANDERSON	H. L. KINNEY
JAMES ARMSTRONG	ALBERT H LATIMER
CAVITT ARMSTRONG	HENRY R. LATIMER
B. C. BAGBY,	JOHN M. LEWIS
R. E. B. BAYLOR,	JAMES LOVE
R. BACHE.	P O LUMPKIN
I. W. BRASHEAR.	SAM. LUSK
GEO. WM. BROWN	ABNER S. LIPSCOMB
JAS M BURROUGHS	JAMES S. MAYFIELD
JNO CALDWELL	A MCGOWAN
WILLIAM L. CAZNEAU	ARCHIBALD McNEILL
EDWARD CLARK	J. B. MILLER
A. S. CUNNINGHAM	FRANCIS MOORE Jr.
PHIL M. CUNY	J. ANTONIO NAVARRO.
NICHOLAS, H. DARNELL	W. B. OCHILTREE
JAMES DAVIS	ISAAC PARKER
LEMUEL DALE EVANS	JAMES POWER
GUSTAVUS A. EVERTS	EMERY RAINS
ROBERT M. FORBES	H G RUNNELS
DAVID GAGE	JAMES SCOTT
JOHN HEMPHILL	GEO. W. SMYTH
J PINCKNEY HENDERSON	ISRAEL STANDEFER
A W O HICKS	CHAS BELLINGER STEW-
JOS. L. HOGG	ART
A. C. HORTON	E. H. TARRANT
VOLNEY E HOWARD.	ISAAC VAN ZANDT.
SPEARMAN HOLLAND	FRANCIS M WHITE
WM. I. HUNTER	GEORGE T WOOD
VAN R. IRION	G W, WRIGHT
HENRY J JEWETT.	WM COCK YOUNG
OLIVER, JONES	Attest

JAMES. H. RAYMOND  
Secretary of the Convention

# AN ORDINANCE.

Whereas, various contracts have been entered into by the President of the Republic of Texas, with divers individuals, with the expressed intention of colonizing an enormous amount of the public domain of Texas; and

Whereas, it is believed that said contracts are unconstitutional, and therefore void from the beginning, and if carried out would operate as a monopoly of upwards of seven millions of acres of the public domain of Texas, in the hands of a few individuals—when, in truth, the citizen soldiers and creditors of the Republic of Texas had, by the laws and Constitution of said Republic, a clear and indisputable previously subsisting right to locate upon the public domain thus attempted to be assigned to said contractors :—

Sec. 1. *Therefore it is hereby ordained and declared,* That it shall be the duty of the Attorney General of this State, or the District Attorney of the district in which any portion of the colonies may be situate as soon as the organization of the State shall be completed, to institute legal proceedings against all colony contractors who have entered into contracts with the President of Texas; and if upon such investigation, it shall be found that any such contract was unconstitutional, illegal or fraudulent, or that the conditions of the same have not been complied with according to its terms, such contract shall be adjudged and decreed null and void: *Provided,* however, that all actual settlers under any such contract, shall be entitled to their quantity of land as colonists—not to exceed six hundred and forty acres to the head of a family, and three hundred and twenty acres to a single man. And in all suits brought by or against any contractors, or any person claiming under, by or through them, or either of them, it shall be lawful for the adverse claimant to set forth any plea that it would have been competent for the State to plead; and the party may introduce testimony to prove the claim or title to have been forfeited, as well

Preamble.  
Attorney General or District Attorney to institute legal proceedings against colonization contractors.

for frauds, or illegality or unconstitutionality, as on account of a failure to comply with the conditions of the original grant or contract; and any such pleas shall be deemed good and valid in law, in all such suit or suits in this State.

Contracts not to be extended. Contractors to have no relief granted.

SEC. 2. *Be it further ordained*, That the Legislature is hereby restrained from extending any contract for settling a colony, and from relieving any contractor from the failure of the conditions, or the forfeiture accruing from non-compliance with the contract.

Ordinance to be adopted or rejected at the same time with the Constitution.

SEC. 3. *And be it further ordained*, That this ordinance shall be presented to the people for their adoption or rejection, at the same time that this Constitution shall be presented to them, and the returns of the votes taken on this ordinance shall be made to the office of the Secretary of State of the Republic of Texas, at the same time the votes for the Constitution may be returned.

Adopted in Convention, this twenty-seventh day of August, one thousand eight hundred and forty-five.

THOS. J. RUSK, President.

Attest,

JAMES H. RAYMOND,  
Secretary of the Convention.

## JOINT RESOLUTION

For the admission of the State of Texas into the Union.

Whereas the Congress of the United States, by a <sup>Preamble</sup> joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to, the republic of Texas, might be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the States of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution; and whereas the people of the said republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a constitution, and erect a new State with a republican form of government, and, in the name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guarantees contained in said first and second section of said resolution: and whereas the said constitution, with the proper evidence of its adoption by the people of the republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said joint resolution: therefore,

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever. <sup>Texas admitted into the Union.</sup>

SEC. 2. *And be it further resolved,* That until the To be entitled representatives in Congress shall be apportioned to two Repre-

representatives.

according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two representatives.

JOHN W. DAVIS,

*Speaker of the House of Representatives.*

G. M. DALLAS,

*Vice President of the United States*

*and President of the Senate.*

Approved, December 29, 1845.

JAMES K. POLK.

## **STATE GOVERNMENT.**

### **EXECUTIVE.**

**GEORGE T. WOOD, Governor.**

**JOHN A. GREER, Lieutenant Governor.**

**WASHINGTON D. MILLER, Secretary of State: JOHN W. HARRIS, Attorney General: JAMES B. SHAW, Comptroller of Public Accounts:**

**Auditor: JAMES H. RAYMOND, Treasurer: JOHN D. PITTS, Adjutant General: GEORGE W. SMYTH, Commissioner of the General Land Office.**

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### **JUDICIARY.**

**JOHN HEMPHILL, Chief Justice:**

**ABNER S. LIPSCOMB and ROYALL T. WHEELER, Associate Justices of the Supreme Court.**

**THOMAS GREEN, Clerk.**

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**JOSEPH C. MEGGINSON, Judge, and HIRAM B. WALLER, Attorney, of the First Judicial District.**

---

**WILLIAM E. JONES, Judge, and JOHN A. GREEN, Attorney, of the Second Judicial District.**

---

**ROBERT E. B. BAYLOR, Judge, and THOMAS JOHNSON, Attorney, of the Third Judicial District.**

STATE GOVERNMENT.

MILFORD P. NORTON, Judge, and CORNELIUS W. PETERSON, Attorney, of the Fourth Judicial District.

---

ORAN M. ROBERTS, Judge, and R. S. WALKER, Attorney, of the Fifth Judicial District.

---

LEMUEL D. EVANS, Judge, and D. W. FIELD, Attorney, of the Sixth Judicial District.

---

CONSTANTINE W. BUCKLEY, Judge, and SAMUEL D. HAY, Attorney, of the Seventh Judicial District.

---

JOHN T. MILLS, Judge, and WILLIAM C. YOUNG, Attorney, of the Eighth Judicial District.

---

BENNETT H. MARTIN, Judge, and ANDREW J. FOWLER, Attorney, of the Ninth Judicial District.

---

FIELDING JONES, Judge, and W. S. GLASS, Attorney, of the Tenth Judicial District.

---

SPRUCE M. BAIRD, Judge, and JAMES W. WEBB, Attorney of the Eleventh Judicial District.



STATE GOVERNMENT.

LEGISLATURE.

SENATE.

\* \* The Lieutenant Governor is, *ex officio*, President of the Senate.

NATHANIEL C. RAYMOND, *Secretary*.

William C. Abbott,  
\*Richard Bache,  
James Bourland,  
Isaac W. Brashear,  
Edward Burleson,  
Edward Clark,  
Philip M. Cuney,  
Jon W. Dancy,  
†Edward Fitzgerald,  
David Gage,  
Jesse Grimes,

Henry J. Jewett,  
J. H. McRae,  
J. Antonio Navarro,  
Isaac Parker,  
S. W. Perkins,  
Alexander H. Phillips,  
B. Rush Wallace,  
William M. Williams,  
Robert M. Williamson,  
James B. Wootten.

HOUSE OF REPRESENTATIVES.

JAMES W. HENDERSON, *Speaker*.  
BEN F. HILL, *Clerk*.

James L. Allen,  
† John D. Anderson,  
James Armstrong,  
Sam Bogart,  
William H. Bourland,  
Guy M. Bryan,

William E. Crump,  
William H. Crutcher,  
A. S. Cunningham,  
James M. Davis,  
John H. Davis,  
§ J. DeCordova,

\* Died at Austin, March 17, 1848.

† Elected in place of H. L. Kinney, resigned; took his seat February 5, 1848, and resigned March 20, 1848.

‡ Resigned, January 13, 1848.

§ Elected to fill vacancy occasioned by the death of Magnus T. Rodgers, and took his seat February 19, 1848.

STATE GOVERNMENT.

James M. Burroughs,  
Thomas Carothers,  
\*Thomas M. Dennis,  
M. A. Dooley,  
Z. Williams Eddy,  
William C. Edwards,  
B. H. Epperson,  
William Fields,  
James Gilliam,  
R. N. Goode,  
Thomas J. Hardeman,  
Samuel G. Haynie,  
Van R. Irion,  
Charles G. Keenan,  
† Mirabeau B. Lamar,  
Henry M. Lewis,  
E. E. Lott,  
J. H. Lyons,  
A. McNeill,  
J. B. McCown,  
John F. Miller,  
S. A. Miller,  
E. M. Millican,  
Sam F. Mosely,  
B. F. Neal,  
E. M. Pease,  
William B. Perry,  
Milton M. Potter,

Charles Bailey,  
Emery Rains,  
William S. Rayner,  
John H. Reagan,  
P. F. Renfro,  
Jerome B. Robertson,  
† Magnus T. Rodgers,  
H. R. Runnels,  
William T. Sadler,  
Thomas J. Shannon,  
James Shaw,  
Adolphus Sterne,  
§ William H. Stewart,  
J. W. Stoddard,  
William B. Stout,  
H. Stuart,  
B. F. Tankersley,  
J. F. Taylor,  
James Truitt,  
Jesse Walling,  
William G. Webb,  
O. M. Wheeler,  
Benjamin J. White,  
E. M. Wilder,  
James Willie,  
C. M. Winkler,  
Johnson Wren.

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\* Took his seat February 26, 1848.

† Resigned, December 14, 1847.

† Died at Austin, January 26, 1848.

§ Elected to fill vacancy occasioned by the resignation of John D. Anderson, and took his seat February 15, 1848.

# FINANCIAL STATEMENT.

## SUMMARY EXHIBIT.

Of the Receipts and Expenditures of the State of Texas from its organization the 19th of February 1846, to the 31st of December 1847: also an estimate of the Receipts for the year 1848, and the Expenditures according to the Appropriations passed at the second session of the Legislature, together with an estimate of the probable Receipts and Expenditures for the year 1849.

### RECEIPTS:

From the organization of the State Government 19th Feb., 1846, to 31st Dec., 1847.

*From Revenue accrued under the Republic of Texas.*

Duties on Imposts,	51,206 13
Direct Taxes,	21,154 87
License Taxes,	7,692 29
Claims against the Government of the United States,	26,922 57
Miscellaneous sources,	2,673 43
Means in the Treasury at the close of the late Government,	19,297 51
<b>Total Revenue and means in Specie from the late Government,</b>	<b>\$128,946 80</b>

# FINANCIAL STATEMENT.

Amount brought forward,	- - -	128,946 80
<i>From Revenue accrued under the State for the same time.</i>		
Direct and License Taxes,	- - -	76,837 88
Miscellaneous sources,	- - -	268 00
Amount of Special Deposits from settlement of successions,	- - -	162 30
		<hr/>
Total Receipts from Revenue accrued under the State,	- - -	77,268 18
		<hr/>
Aggregate Revenue and Means from Republic and State,	- - -	\$206,214 98

## EXPENDITURES:

From the organization of the State Government 19th February, 1846, to 31st December, 1847.

Disbursements of the Treasurer on account of Expenditures of the State,	121,103 49
Disbursements of the Treasurer on account of Treasury Warrants of the late Republic of Texas, which were outstanding at the organization of the State,	15,643 29
Amount of County Tax Fund and Special deposits subject to be withdrawn,	211 01
Amount reserved for school purposes, being one-tenth of the Revenue of the State,	7,710 58
	<hr/>
Total Expenditures,	\$144,668 37
	<hr/>
Leaving a balance of available means in the Treasury on the 31st Dec., 1847, of	\$61,546 61

## **FINANCIAL STATEMENT.**

### **ESTIMATE:**

**Of the Receipts and of the Expenditures according to the Appropriations made for the support of the State &c., for the year 1848.**

### **RECEIPTS:**

From Direct and License Taxes for the year 1847, not due until 1848, and	
Miscellaneous sources, - - -	92,145 10
Balance due from the same sources on account of the Revenue of the State for the year 1846, - - -	15,450 00
From Customs, Direct and License Taxes accrued under the laws of the late Republic of Texas, - - -	4,000 00
	<hr/>
Probable Amount of Receipts,	\$111,595 10
Means in the Treasury on the 31st December, 1847, - - -	61,546 61
	<hr/>
Total estimated means for the support of State for the year ending Dec. 31st, 1848, - - -	\$173,141 71

### **EXPENDITURES:**

Expenses of Legislative Department (2d session,) including printing the laws, - - -	56,880 00
Expenses of Executive Department,	31,300 00
Do. " Judiciary do.,	31,725 00
Erection and support of a Penitentiary,	10,000 00
Miscellaneous expenses, such as Private Relief Bills, Pensions, &c., -	17,916 50
	<hr/>
Expenditures for the year 1848, according to the Appropriation Acts,	\$147,821 50

# FINANCIAL STATEMENT.

Balance due on the Appropriations of 1847, on the 31st Dec, 1847, which is likely to be drawn,	14,601 69
Balance due on the Appropriations of 1846, on the 31st Dec., 1847, which is likely to be drawn,	3,539 00
Aggregate Expenditures for the year 1848,	\$165,953 19
Leaving in the Treasury on the 31st Dec. 1848, a balance of	7,188 52

## ESTIMATE.

Of the Receipts and Expenditures for the year 1849.

## RECEIPTS.

From Direct and License Taxes and Miscellaneous sources,	98,400 00
Means in the Treasury on the 31st Dec. 1848,	7,188 52
Total Estimate of Receipts and Means for the year 1849,	\$105,588 52

## EXPENDITURES.

Executive Department,	29,850 00
Judiciary, do.	31,475 00
Erection and support of a Penitentiary,	10,000 00
	71,325 00

# FINANCIAL STATEMENT.

Amounts brought forward	105,588 52
	71,325 00
Miscellaneous Expenditures, such as Pensions, amounts due on account of Relief Bills passed at the 2d session of the Legislature, - - -	7,613 39
Expenditures for the year 1849, -	78,938 39
Leaving in the Treasury on the 31st of Dec., 1849, an estimated balance of	\$26,650 13

*Summary Exhibit of the different species of Taxable property in the State of Texas, and the amount of Tax accruing thereon, taken from the assessment rolls for the years 1846 and 1847.*

## For 1846.

44,729,174 acres of Land valued at \$27,520,223	Tax thereon	\$55,040 44
23,980 Town Lots " " 2,539,176	" "	5,078 35
32,164 Negroes, " " 10,488,548	" "	20,977 16
35,648 Horses, " " 1,504,288	" "	3,008 58
382,733 Cattle, " " 1,510,950	" "	3,021 90
Miscellaneous property, " " 1,089,855	" "	2,179 71
Total value of property assessed,	\$44,653,040	\$89,306 08
Roll tax, (one dollar on each person,) - - -	- - -	15,310 00
Total, - - - - -	- - -	\$104,616 08

*Note.*—It will be observed that no allowance has been made in the Estimate of Expenditures for the year 1849, for the expenses of the Legislature which meets in the month of November of that year, but the balance estimated as likely to be in the Treasury on the 31st of December, 1849, will it is thought, be adequate to defray the expenses consequent thereon to that time. Should the session however, continue longer than the 31st Dec., 1849, the subsequent expenses of the same will have to be met by the Receipts from revenue of 1850.

# FINANCIAL STATEMENT:

For 1847.

48,807,323 acres of Land valued at	\$30,765,395	Tax thereon,	\$61,530 79
22,237 Town Lots,	" " 2,984,390	" "	5,968 80
37,106 Negroes,	" " 12,131,268	" "	24,262 53
41,209 Horses,	" " 1,721,691	" "	3,443 38
405,746 Cattle,	" " 1,663,071	" "	3,324 14
Miscellaneous property,	" " 1,675,174	" "	3,350 35
Total value of property assessed,	\$50,939,997	" "	\$101,879 99
Poll tax, (one dollar on each person,	- - - - -	- - - - -	18,504 00
Total,	- - - - -	- - - - -	\$120,383 99

*Summary exhibit of the debt of the late Republic of Texas, including interest due on the same to the 1st of January, 1848..*

Debts which may be considered Domestic.

Audited Drafts,	- - -	267,384 40
Treasury Notes,	- - -	2,553,941 00
Eight per cent. Bonds,	- - -	809,800 00
Funded Debt,	- - -	1,675,800 00
* Interest on Liabilities,	- - -	2,539,221 21
Unaudited Claims,	- - -	1,060,000 00
Total of Domestic Debt,	- - -	\$8,906,146 61

*Note.*—About one sixth of the quantity of land as shown above, had been assessed from the County Records as non-resident property, but was on examination found to have been rendered in other counties than where it lies, consequently a corresponding reduction should be made from the quantities and valuation of the land as shown in the above exhibit, and a similar reduction made from the amount of taxes.

\* The Comptroller has allowed five per cent. interest on the amount of Treasury Notes in circulation which were issued not to bear an interest, which amounts to \$740,749 21, and included in the item of interest. It is for the Legislature to say whether this amount shall be allowed or not.



# FINANCIAL STATEMENT.

## Debts which may be considered Foreign.

Due the Bank of the United States, including interest,	\$740,000 00
* Claimed by James Holford and associates for the purchase of the steamer Zavalla including interest,	333,054 90
* Claimed by F. Dawson and others for the payment of Naval Vessels, including interest,	1,071,000 00
<b>Total of Foreign Debt,</b>	<b>2,144,054 90</b>
<b>Total Debt,</b>	<b>\$11,050,201 51</b>

Probable average rate at which each class of the foregoing liabilities have been available to the government on a par basis.

### FIRST CLASS:

Ostensible or face value. Equivalent value.

Is composed of the amount due the Bank of the United States, that claimed by Jas. Holford and F. Dawson, and certain Audited Drafts and amount due Saml. Swartwout and others, and the amount of un-audited claims including interest on the same, all of which are valued at par as having been so available to the Government.

\* The amount claimed by M. F. Dawson and others, and James Holford and associates, as the value of Naval Vessels furnished by them, was originally by the former \$280,000, and by the latter \$90,014 84, but owing to the failure of the government to meet the demand at maturity, double the sum in Ten per cent. Bonds were issued according to the previous agreement, to cover the debt, and is so included in this exhibit.

# FINANCIAL STATEMENT.

	Outstanding or face value.	Equivalent value.
Am'ts brought forward,	3,439,394.97.	3,439,394.97

## SECOND CLASS:

Is composed of the Ten per cent. Consolidated Stock of June 7th, 1837, including interest which is valued at 33 $\frac{1}{4}$  cents on the dollar, as having been so available to the government.

1,352,291.93.	450,763.97
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## THIRD CLASS:

Is composed of the Ten per cent. Stock created by act of Feb. 5th, 1840, and the Eight per cent Stock created by the same act; including interest, which are valued at 30 cts. on the dollar, as having been so available to the government.

1,468,152.00.	440,445.60
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## FOURTH CLASS:

Is composed of certain Audited Drafts in circulation, Treasury Notes and Eight per cent. Bonds including interest, which are valued at 25 cents on the dollar, as having been so available to the government.

4,790,362.61.	1,197,590.65
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Total,	\$11,050,201.51.	5,528,195.19
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JAMES B. SHAW,  
Comptroller.

# State Census of 1847.

Counties.	Electors.	White males under 18 years.	White males der 18 and un- der 45 years.	White males over 45 years.	White Females.	Slaves.	Free colored persons.	Total white population.	Total white and colored popula- tion.
Anderson	343	444	330	60	664	253	1	1,498	1,761
Angelina	136	218	118	31	312	154	7	679	834
Austin	374	395	345	62	604	1,274	1	1,406	2,687
Bastrop	328	362	293	52	566	624	22	1,273	1,797
Beaumar	616	1,054	1,373	274	1,865	202	5	4,566	4,790
Brazoria	359	403	507	109	604	3,013	5	1,623	4,641
Brazos	82	130	74	13	138	80	1	355	435
Bowie	251	328	287	46	510	1,034	1	1,121	2,155
Burleson	208	249	187	45	385	330	1	866	1,196
*Calhoun	123	107	49	11	199	85	1	366	451
Cass	480	590	488	98	829	943	1	2,005	2,949
Cherokee	546	720	513	114	1,128	599	1	2,475	3,074
Collin	193	249	178	37	413	74	1	877	951
Colorado	215	304	265	55	451	565	1	1,075	1,640
Comal	144	194	295	44	384	51	1	917	968
Dallas	396	518	376	83	833	181	1	1,820	2,001
Denton	81	189	126	15	290	5	1	620	625

# STATE CENSUS OF 1847—CONTINUED.

Total white and colored population.	Total white population.	Free colored persons.	Slaves.	White Females.	White males over 45 years.	White males over 18 and under 45 years.	White males under 18 years.	Electors.
1,173	791	1	382	352	38	180	221	173
3,293	2,931	15	361	1,373	115	605	838	638
2,886	2,204	3	667	1,001	98	502	603	447
2,101	852	25	1,246	358	50	237	207	257
4,758	3,950	1	783	1,749	129	1,200	872	732
459	313	1	146	125	24	97	67	71
1,677	1,146	2	530	486	48	295	317	244
1,246	1,156	4	90	514	58	247	337	215
3,129	1,788	2	1,339	782	95	425	486	423
905	697	4	204	295	43	177	182	197
7,606	6,557	33	1,016	2,487	419	2,247	1,404	1,043
6,893	3,384	4	3,505	1,549	149	742	944	646
1,596	1,487	2	107	630	148	357	352	372
1,860	1,757	2	101	835	76	335	511	348
1,930	1,397	2	531	636	73	302	386	335
996	977	11	19	445	44	187	301	128
718	440	11	267	199	35	100	106	127

# STATE CENSUS OF 1847—CONTINUED.

Counties.	Total white and colored population.	Total white population.	Free colored persons.	Slaves.	White Females	Whites males over 45 years.	White males over 18 and under 45 years.	White Males under 18 years.	Electors.
Jasper	1,048	797	53	251	405	49	170	173	171
Jefferson	1,299	1,068	4	178	494	50	203	321	234
Lamar	4,510	3,639	4	867	1,708	167	712	1,052	581
La Vaca	1,048	763	4	285	376	30	153	204	142
Leon	998	705	15	293	321	25	162	197	167
*Liberty	2,150	1,397	15	738	594	72	336	395	409
Limestone.	1,856	1,343	4	513	580	49	320	394	333
Matagorda.	1,797	755	4	1,038	334	33	215	173	200
Milam	1,097	943	22	154	415	49	184	295	194
Montgomery	1,727	1,073	22	632	491	63	236	283	262
Nacogdoches.	4,172	2,917	27	1,228	1,328	158	640	791	616
Navarro	1,368	1,272	ns:	96	611	56	305	300	253
*Newton				tur	Re	No			
*Nueces	2,845	2,798		47	1,129	138	834	697	990

# STATE CENSUS OF 1847—CONTINUED.

Counties.	Total white and colored popula- tion.		Total white pop- ulation.		Free colored persons.		Slaves.		White Females.		White males over 45 years.		White males over 18 and un- der 45 years.		White males un- der 18 years.		Electors.	
Panola	2,023	1,458	565	647	2	565	1,368	70	339	402	368							
Polk	1,590	1,068	520	489		520	1,368	47	208	324	237							
Red River	4,418	3,030	1,388	1,388		1,388	1,368	125	625	912	596							
Refugio	187	179	8	76		8	76	10	57	86	55							
Robertson	817	588	229	253	8	229	253	21	153	161	154							
Rusk	3,989	3,181	800	1,381		800	1,381	102	742	956	674							
Sabine	1,921	1,251	670	607		670	607	45	265	334	305							
San Augustine	3,831	2,176	1,655	977		1,655	977	114	447	638	495							
San Patricio			ns.	Re		ns.	Re	No	542	771	578							
Shelby	3,318	2,555	763	1,133		763	1,133	109	542	771	578							
Smith	1,050	882	168	402		168	402	42	190	248	187							
Titus	2,440	2,157	280	977		280	977	93	446	641	446							
*Travis	2,584	2,140	441	721		441	721	26	960	433	329							
*Tyler	1,153	891	262	399		262	399	48	164	280	210							

# STATE CENSUS OF 1847—CONTINUED.

County.	Total white and colored population.	Total white population.	Free colored persons.	Slaves.	White Females.	White, males over 45 years.	White, males over 18 and under 45 years.	White males under 18 years.	Electors.
Upshur	1,152	1,023	1	129	463	44	195	321	165
Victoria	1,498	1,044	1	453	458	52	296	238	247
Walker	2,688	1,881	6	801	821	85	432	543	476
Washington	3,949	2,205	4	1,740	985	100	509	611	545
Wharton	1,315	413	2	900	165	26	120	102	136
Total.	142,009	102,961	295	38,753	45,099	4,899	25,149	27,814	22,013

\*Manifest error in returns. It may be remarked, also, that the returns from several other counties are, apparently, but little less erroneous.

† Returns from Jefferson received in State Department, March 26, 1848.

‡ No returns from Newton and San Patricio counties.

## RECAPITULATION.

Electors, . . . . . 22,013

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White males under 18  
years. . . . . 27,814

White males over 18  
and under 45 years . 25,149

White males over 45  
years . . . . . 4,899

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Total white males . . . 57,862

Total white females . . . 45,099

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Total white popula-  
tion . . . . . 102,961

Total Slaves . . . . . 38,753

Total free colored  
persons . . . . . 295

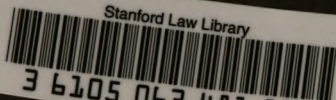
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Total population  
of State. . . . . 142,009

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